



Journal of a Whaling Voyage on  
Bark Annie Ann of New Bedford.

Capt. John C. Purce

Thursday  
June 24 1869

Sailed from New Bedford with a light wind from the South; it came in foggy and ship was anchored off Round Hill but got under weigh again in the night and Pilot left at daylight to get a chance to pilot in one of two whaleships in sight and inward bound.

Brothers Scorsuro and John M. Purce and nephews Sidney and Frank Purce with several others came in the boat with us from the wharf to the ship which was lying at anchor in the lower harbor.

The weather was fine and the sea very calm but I knew very little of wind or weather after the boat with our friends left us to return to the shore for several weeks as seasickness took possession of me as soon as the ship was under way.

I had fair winds and calms and gales and squalls together with fog and thunder lightning and rain all the time we cruised in the North Atlantic previous to our going into Fayal but mostly gales, rain and squalls with a terrible sea running and breaking over our deck, a most uncomfortable and unsuccessful cruise

Aug. 5

Aug. 8

Aug. 9

Aug. 11

Lat. 40.50 N  
Long. 46.56 W



We saw a great many sails, mostly merchant men, spoke to one of these a Frenchman the Nonpareil of Nantes, but exchanged signals with several and longitude with several of different nations - English, French, German, Italian, Swede and American. One a German emigrant ship passed very near us when a few weeks out (we changed longitude with her), and it was amusing to see the heads that peeped above her rail at us and to see the motley crowd that gathered about the bows to look at a live whaleship.

Aug. 5 1869 Spoke Bark Java, Capt. Manton of New Bedford, the Capt. and boat's crew came on board our ship and our mate (Mr. Gifford) and boat's crew went on board the Java and staid several hours. It seemed very pleasant to see some new faces.

"Willie" has been very well and happy ever since we sailed.

Aug. 8 1869 Spoke Bark Louisa Capt. Slocum of New Bedford. He came on board.

Aug 9 " Spoke Brig Pocahontas Capt. Fisher of Marion. He came on board and recommended "Fisher's Golden Seal" a preparation for every kind of sickness & sea-sickness especially.

Aug 11 1869 Saw Barks Glacier of New Bedford and Colchis of Boston chasing whales at night Spoke the Glacier and Capt. Gifford came on board. The whale they were chasing is the first one we have seen this cruise. Have seen plenty of grampus and blackfish.

Whale

Lat. 40.50 N

Long. 46.56 W



and taken our Blackfish that made  
a barrel of oil.

Oct 24

Aug 31 1869 Spike Ship Commodore Morris Capt.  
Jacob Howland. Capt. He came on board  
in the morning and staid till night.  
He brought Willie a few oranges and apples,  
as he was just out from Fayal.

Sept. 1 " Ship Com. Morris in sight.

" 5 " Saw Sperm whales, lowered without  
Whales success. Lat. 40.53. N. Long. 47.20 W.

" 8 " Saw Sperm whales lowered without  
Whales success. Lat 40.48 N. Long 48.12 W.

" 25 " Have had twelve days in succession  
of gales a part of the time very heavy so  
that the boats had to be turned up and  
lashed. A terrible sea running and  
breaking over the ship; tons of water have  
washed across her deck and officers agree  
that the ship carries her boats well for  
if she had not they would have been  
washed off before this such is the fury  
of the waves.

25

" 28 " Saw Sperm whales, lowered - L. Boat  
got fast; whale run to the windward  
could not haul up to him and at  
Whales night cut from him. Lat 40.45 N. Long 47.51 W.

Oct. 1 1869 Saw Sperm whales, lowered and L. boat  
got one large enough to have made 60 bbls  
but only made 35 bbls he was so poor.

Whales Our first whale after all this anxiety and  
watching and waiting and beating about.  
Lat 40.00 N.



Oct 24 1869

Flores and Corvo in sight. This being the first land I have seen since sailing from home just four months since it excited such feelings of pleasure as I am unable to express.

When the third officer called John at day break, saying "land in sight", my eyes were open wide, and refused to close themselves till they were indulged in a sight of real land.

I had an idea it would be all out plain but

no! John showed me something which looked

very much like a cloud close to the water and

said "there it is." I could hardly be convinced

till we drew nearer and at last in the afternoon of

25

I was permitted to set foot upon rock and sail

and knew I was on Terra firma in earnest.

The natives of Flores welcomed us by coming in masses

men, women and children to meet and greet us on

the landing stones. We headed this procession

to one of the dwellings, and sat surrounded by

them the short time we remained there. They

came near decouring Willie, and he not remem-

bering anyone but the ship's company being but

nine months old when we sailed; was very much

overpowered by the kisses and caresses he received

from the Portuguese women and gave vent to

his feelings in tears after about a dozen kisses,

but was restored to himself readily by coming to papa.

We did not land at Corvo the small Island

several miles distant. The houses at the

Western Islands are built of rough stones, one story

high with from two to four rooms, with stone parti-

tions mostly, and tile roofs, no chimneys, and the

building is whitewashed on the outside, many of

the houses have no floors.



## Flores

At Flores we got sweet, Irish potatoes, onions, pumpkins, chickens, apples, figs, oranges and strawberry tomatoes. We were out of vegetables and it seemed good to see and taste them again. The people seemed poor, every thing indicated it, and all were anxious to sell whatever they produced. The women do most of the outdoor work and carry <sup>bushel</sup> baskets of potatoes or other articles on their heads; they go barefooted and all wear a handkerchief of some kind pinned over their heads instead of hats or bonnets. Those who seemed to be dressed up for the occasion had gay colored, mostly yellow silk handkerchiefs on their heads and clean light colored calico dresses. The men wear hats. This island has a number of settlements or villages upon it and the one at which we stopped is called São João Grande. All these villages have a catholic church in them. One man a native deserted here and another man attempted it but was unsuccessful.

Now



Corvo

Flores



Fayal

Nov 5 1869

After leaving Flores we directed our course as near as we could for Fayal but head wind kept us beating the whole distance and consequently we were made a long passage not seeing in sight of it till Nov 2<sup>nd</sup> and then we were still getting near enough with the ship to go ashore in the boat. Willie seemed to enjoy being on shore in a house very much and it was a great treat to me, but he didn't know as he would go to sleep at all he was so delighted with sitting up in bed and looking around the room. He soon learned to go up stairs alone.

I was quite pleasantly disappointed in Fayal; for after seeing Flores I made up my mind that the settlements on the two islands would resemble each other much more than they do. The Island is Fayal but the settlements have names assigned them as though they were towns. The principal place for business and harbor (such as it is) is called Horta (meaning orchard) and every spot of land is cultivated and very fruitful and yet the mass of the people seem very poor. They are taxed so much by the Portuguese government for support of State and church.

They have five churches and many pretty buildings here, which make a very pretty appearance as you come into the harbor and approach the pier. There is one continuous row of dwelling the length of the pier and fronting it and the harbor. Many of the built up there are two and more stories high <sup>all</sup> built of stone, plastered outside and in and whitewashed



## Fajal

on the outside, with blinds and verandahs overlooking the streets. There are several forts on the island and some of them kept garrisoned. They are feeble looking structures for defence, but I should suppose they answered their purpose very well for I don't think any body would fight much for possession of the whole Western Islands. About nine miles across the harbor old Pico rears her volcanic head and while we were at Fajal we were treated with a clear view of the lofty peak, it looks majestic in its grandeur and silence, but if I resided in its vicinity I should be fearful of its breaking that silence in an unexpected moment and venting its pent up fury on my head. It sends forth smoke at times, so say the inhabitants. In the distance is St. Georges, but we did not get a near view of that.

When we awoke in the morning we heard the donkeys clattering through the street with driver goad in hand and red turbaned head in his rear. Hooting and yelling at the beast. When we took Willie to the window so he could look into the street he was wild with excitement. The donkeys were loaded with four boxes of oranges apiece hung across their back two on each side or attached to a cart with willow sides and solid wooden wheels on an axle which turned under the cart; and women and girls not more than fourteen or fifteen years old with



## Fayal

Bushed baskets of oranges or large wooden pails of water on their heads making quite a procession in the streets. Saturday afternoon we went into Mr. Dabney's garden (the American Council's garden); it was beautiful and refreshing; I only regret that I had so little time to spend here. It seemed almost impossible to think it was Nov. when we were surrounded by roses and carnations, oranges, and other fruits.

There is a noticeable feature in the state of the natives of these islands; which is their poverty, notwithstanding their constant labor and willingness to perform it, and ability to live very cheaply. And may be accounted for by their religion which is Catholic and must be extravagantly provided for; and the indulgences which it grants; prominent among which is a disregard of the Sabbath and profane use of liquors. On Sunday churches are open for service; shops are open for trade. The latter are numerous especially on San Francisco St. (in Fayal the principal street) and all contain more or less liquors. Loaded donkeys, women, children, with their burdens on their heads are as common in the streets on this day as any other.

I learned that 12 or 15 cts a day was about an average sum for a working man or woman's wages, but their provisions are correspondingly cheap.

Mr. Dabney (our council) having resided among these people so many years and being acquainted with the circumstances of all has established a custom at his place of business of giving to the poor from 25 cts and upwards apiece to all applicants who are



deserving from every Saturday afternoon.  
We had heard of this distribution before  
but John witnessed it while we were there and  
he said there was a crowd of applicants.

He is held in high esteem by the natives  
and employs many of them about his premises  
and in his business.

Fayal is a healthy and pleasant place  
and is so situated as to be able to welcome  
many a disabled vessel during the year. It  
has a good hospital and two physicians  
one, English, the other Portuguese.

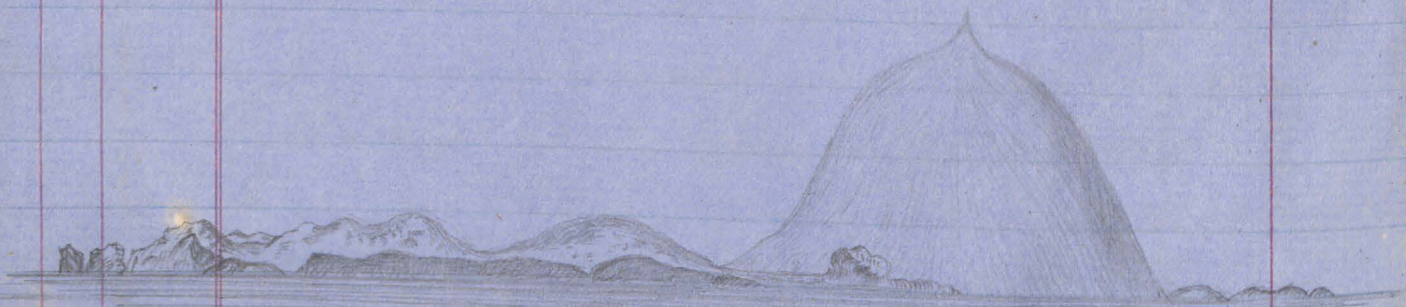
John discharged his mate (John L. Gifford)  
here sick and another man (foremast hand) sick  
and another man (foremast hand) sick.



Fayal

Pico

View No 1



Fayal

Pico

View No 2



Nov 9 1869

We returned to the ship carrying oranges, apples, chickens and a few small cheeses, a basket of eggs.

Wind was light for a week and we made slow progress. Hecla left Fayal about the same time but after we got a breeze we lost sight of her.

John could get no officers to suit him in Fayal so he promoted those he had and went on.

Dec 16

St. Antone of Cape Verde islands in sight.

" 18

Braze another of Cape Verde islands in sight, we also sighted St. Jago.

When we got down in about 8:00 A.M. we were becalmed for a week or ten days. Several sails in sight every day. Spoke the English ship Caribaldi of Bridgewater, from Cardiff bound to Montevideo. S. A. loaded with coal. Mr. Macomber with a boat's crew went on board of it and the Capt. <sup>sent</sup> gave us some papers and Willie a toy soldier with tinbells which he would strike together upon pressure. Next day the Capt. of the Caribaldi invited John by signals to come on board so he went and staid to dinner with him and <sup>the Capt.</sup> he came back and staid to supper with us. Our boats lowered for blackfish, struck two but the crews drew <sup>from one</sup> and they only succeeded in capturing an eowfish which we found very good eating.

Jan 2 1870

Saw a number of sails, spoke one an Italian from Glasgow.

" 7

One sail in sight.

" 19

Island of Trinidad in sight. Capt. and 2<sup>nd</sup> Mate with two boat's crews went ashore fishing. They got plenty of fish but many of them were good for nothing having no scales and a terrible



Jan 19 1870 Thick hides and teeth like human teeth. They  
 caught one small shark. While they were ashore  
 fishing a green turtle went swimming by the ship. Feb  
 and the mate lowered a boat for him but did  
 not succeed in capturing him. We find our  
 cabin boy to be quite an artist and he sketched  
 the island for us. The island is a ragged  
 rocky, mountainous, desolate island. A great  
 number of birds mostly tropic birds, but some  
 albatross called by sailors "gannets".

### Trinidad



- " 31 " Island of Tristan da Cunha in sight.  
 " " Saw two Barks standing in towards the land  
 one the Sea Fox of New Bedford the other  
 E. B. Phillips of New London.  
 Feb 1 " John went on shore to see about getting some  
 potatoes but it came on rough and he came  
 back to the ship without any and brought  
 Capt. Braly of the Sea Fox with him, he staid  
 till night and they talked about the whaling  
 grounds in the Indian ocean. He is bound  
 there after cruising here for a month.  
 " 2 " Blowing a gale and a heavy sea on, could



not found. Mr. Baker, of the Baker's Bay, says  
 off and on, nothing is especially common  
 there. Today, fresh mackerel are common on the  
 other side of the island from the settlement.  
 That has gone with a boat over a boat  
 fishing. The boat has sent the mackerel  
 in from fishing. When the mackerel  
 are brought off a supply of the English  
 the mackerel are used which have names  
 "Mackin" and a cat which name is "Gyphog"  
 Capt. Baker reports seeing a large amount  
 of seal many others around the island and  
 also mackerel. The inhabitants say they lay  
 their eggs on the top of the mountain and the  
 eggs of the latter are of very superior quality and  
 as large as goose eggs. Today saw a sperm whale.  
 Today it is another in show than it has  
 been since we arrived here, and John went  
 on shore for mackerel. Brought 33 mackerel with  
 mackerel, 3 sheep, 1 hog, 2 pigs, 5 geese and a  
 few pounds of butter, and paid for them in  
 silver, brass, soap, powder and axes. About  
 a dozen of the men came off to the ship, <sup>including</sup> <sup>one</sup> <sup>of the</sup>  
 all the heads of families, there are on the island.  
 There are only 63 men women and children all  
 told living here and they are a mixture of  
 English, American, Irish, German and African  
 a large sprinkling of the latter. A couple  
 were married when about the time we arrived  
 here, taking advantage of the presence of  
 a sea captain to act as chaplain. We learn  
 that there is the custom here. A captain

6  
 7  
 5 Whale

Apr 3 1870



1870

must find himself in an awkward situation when called upon on his arrival at port to perform this ceremony.

I omitted to say in the proper place that on Friday the 4<sup>th</sup> John attempted to go on shore but it being so rough he had made up his mind to return to the ship when he saw the Sea-Fox whaling and a signal on our ship for him to return and he did so; we then made for the whale but the boat from the S.F. went on and missed him.

Feb. 10 1870 Saw a whale ship making for the island just at night. Thursday we spoke him and found it to be the bark Java. Capt. Maunter came on board of us; he is eight months out without any oil, so we are a very little more in luck than he. We spoke him in Aug. in the North Atlantic, he then thought some of going to the Indian ocean but has since decided to remain in this ocean.

Saw a merchantman belonging to the United States in at the island.

" 12 " Another ship in sight, supposed to be a whaler. The Java in sight. We are cruising around the island in hopes to fall in with whales on the ground where a good deal of oil has been taken.

Cruised here till the fifteenth when we left for the Cape Horn Pigeon ground. Saw but one ship on this ground and that proved to be the bark Java; did not speak her. Saw no whales here.

Nov. 5. 1868



1870

Mar. 4  
Jan. 5: 156  
10/186355

Whole

nor any appearance of any ever having been there; from  
here we steered our bark for the meridians, but  
found no signs of whales there; then set sail  
for the Cape and on the 4th of March stevedore  
raised sperm whales about 9 a.m. Lowered  
Starboard and Waist boats. Starboard boat got fast  
about 1/2 past 2 p.m. to a 75 bl sperm whale. It was  
dead calm on the waist boat would probably  
have got one, but the whale she was in pursuit  
of heard or saw the boat and governed himself  
accordingly. But we are very thankful for the  
one we did get. Commenced cutting him in as  
soon as every thing could be made ready. Got him  
all cut in afternoon of the 5th by working all night.  
In the night one of the boatstewards (John Mc Donald)  
got his eyelid out and the side of his head bruised  
but nothing serious, was about his work again Monday  
the 7th. Saturday night all hands were about-  
tired out and all went to bed, leaving me to  
stand watch till twelve o'clock. The wheel was  
made fast and that is what sailors call blind  
Jack steering. I rather think I kept pretty good  
watch for I went out on the house or looked  
a dozen or twenty times. It was calm and smooth.  
Saw a whale ship sailing which proved to be  
the C.B. Philippi (Capt. Chapell) of New London.  
Spoke him and he came on board, is an old man  
and very pleasant. They got their whale the 3rd  
he is going in to St. Helena and took a letter  
there for me. Was in sight all night when I stood  
watch. Came on to flow a gale but still kept  
sailing. Tuesday morning, about one o'clock  
John Mc Donald (boatsteward) whom relieved from



Mar. 8 1870

his watch on deck, told another boatswain who was in his watch that he had got to go over the side previous to turning in, and that was the last that was seen of him. He was not missed for over an hour, and then nothing could be found of him. It was blowing a gale and a heavy sea was running and he could not swim. Most probably he slipped and fell overboard washed him off and took him under the ship. It is a dreadful thing to happen and it makes us all feel sad for every one liked him very much. John promoted him from the forecabin in Nov. last (to fill a vacancy caused by promoting his officers), on account of his faithfulness and ability. He was a native of Edinburgh Scotland and has no relatives in the States. He was intelligent, good principled and industrious, and we miss him much.

9 Oil all stowed down tonight.



(Settlement  
at this point)

Tristan d'Acunha

Mar. 2

April



May 25/87

The morning of the Indian Ocean. Found it very  
 rough around the Cape, but for all that we made  
 a fine run of it and was soon around; and being  
 so near the Cape, and our own vicinity,  
 we passed the Cape and very near the  
 Cape, the Indian Ocean, ships being off and  
 went steering along as usual, and no thought  
 was made of danger. We looked like an island  
 and the breeze like a full afternoon. The breeze  
 no longer felt enough off not to feel the breeze  
 of the Cape, we turned for home and cap-  
 tured him, that was the last of the day. We had  
 splendid both and very fat fish. It was  
 the best since we took the ship, and what we  
 got. The weather was 22° we got  
 right, which that was about 22° we got  
 of oil.

Today finished cleaning down the oil which the  
 last week made and put down 110 lbs and  
 1 gal, think if we could have saved it all there  
 would have been 120 lbs.

Today raised sperm whales, along the coast  
 a heavy swell on but the gun, lowered, the  
 whales being near the ship and the water  
 boat went on and struck but was captured  
 on one boat and the whale went off with the  
 gun. The other boats went in pursuit of the  
 whale but did not succeed in getting him.  
 The whale was quite dissatisfied with the gun.  
 makes management a management and  
 in referring to it at the supper table the 2nd mate  
 then took an awful passion and rage called  
 him a liar and most awful meddling dog.

" 81 " 81  
 " 8 " 8

The morning of the Indian Ocean. Found it very  
 rough around the Cape, but for all that we made  
 a fine run of it and was soon around; and being  
 so near the Cape, and our own vicinity,  
 we passed the Cape and very near the  
 Cape, the Indian Ocean, ships being off and  
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 of oil.



Apr. 1876

Apr.

to him; and John told him he need not do any further duty on board the ship.

They are talking the matter over now but how it will be settled will be determined when we get into port. He desired to return to duty, said he was very sorry for what he had said and done. He is now on duty.

" 9 "

This A. M. John being at mast head raised a sail which was decided to be a whaler; and about 4 p. m. she ran down to us; one was guessing that it was the Mercury and another it was the Sen. But when she drew near all came to the conclusion that it must be the Lancer, Capt. Wm. J. Macy which seemed almost too good to believe; but indeed proved true. Capt. Macy came on board our ship and staid till Sunday night the 10th. It seemed almost like being at home to have him here; but still there was a lack for his family were absent and he felt the lack more keenly for seeing our family together. Said it made him homesick.

He talked over home matters and John & he talked whaling. We are both going to cruise a few weeks longer here at Fort Dauphin and then go into port. He is a year out, and over ten months out this month. He hails 270 bbls sperm oil all told and we hail 220 sperm oil all told.

" 10 "

This A. M. Lancer in sight. P. M. She appeared to be running down to us and raised whales and lowered her boats. Saw the boats down and run for them and raised the whales from our ship about 4 p. m. Lowered the boats and chased them till dark but did not succeed in catching any. The Lancer's boats were

Whales







Apr. 17 1870

April

- in readiness to cut, so that John went to bed between eleven and twelve o'clock. He was up before daylight and they began to cut. Took his head in whole; a big piece of meat and no mistake. But the carcass goes about noon and the case is up at night. Finished boiling today the 17<sup>th</sup> and find we have 60 lbs sperm oil on hand on the deck from this whale caught after sunset.
- " 18 " "We are having very pleasant weather here, & seem to be out good whaling ground. This p.m. while I am writing hear them sing out from mast head "Sail ho," suppose it to be a whaler. It proved to be the Lancer and Capt. Macy came on board. In talking with John he happened to mention that some ironwork on one of his masts was needing repairs and John proposed his taking our blacksmith on board his ship and have him fix it up; he did so and we parted company for a few days; and Saturday night we spoke him again and he and the blacksmith came on board. We staid that night and in the morning the Atlantic Capt. Crow was close by us. Capt. Crow came on board of us and the three men kept the cabin quite lively with their talk; I was all the audience there was & of course was an attentive listener with the privilege of responding occasionally, but did not dare to be an opposer as there were three to one. I was amused to hear their opinions in regard to fitting out a ship with officers and crew all women. They all agreed that in such a case there would be high morals and a row generally before six months had elapsed. I merely ventured to say they had an exalted

May



April

1870

opinion of the sex. By opposition I was fearful I should serve as a case in point and thereby defeat what I might be wishing to accomplish.

" 26 "

The Lancer went out of sight of us bidding us good bye by hoisting her flag three times at sunrise peak, she was steering N. E. bound to Mauritius. The Atlantic went out of sight the 25<sup>th</sup>.

May 5 "

Whales

Raised sperm whales in the afternoon going quick to windward; lowered but could not get near them & at sunset the boats came aboard.

" 9 "

Have been having a calm for three or four days and today have quite a good breeze but ahead. We are trying to make our way to L'Anse de Morin, Banks Wharves to Mahe, Seychelles Islands.

" 10 "

Saw a number of sails. (Merchantsmen.)

" 12 "

Thick, squally and rainy weather, Mate raised a sperm whale off deck close to the ship, he spouted three or four times; was heading S. W. lay aback  $\frac{3}{4}$  of an hour and then kept off S. W. but saw no more of him.

" 13 "

Island of Bourbon in sight but not out clear, stood towards the land, a beautiful looking island what could be seen of it. Was anxious to see the volcano but the clouds would envelope it in spite of all my desires.

" 20 "

L'Anse de Morin Banks. Saw the Bark Lancer and Capt. Macy came on board. He had been into Mauritius and got his letters from home, he brought them on board and read such parts as would be of interest to us. We were much pleased to see him and hear from home. Neither of us saw whales on the Banks.

" 23 "

Monday. Made Galaga Island; stood in



May 1870

23

within two or three miles of the land. It is a beautiful pleasant looking island. Low and long and covered with ironwood and cocoanut trees and had a very inviting appearance. I wanted very much to go on shore here and pay a visit to the French family residing here. I had heard of them before from Capt. Macy and that they were very much pleased to have people come to see them. They keep slaves and make cocoanut oil. Keep a span of horses and live in an easy comfortable style, speak English and are very liberal with those who visit them. The island is surrounded by a reef and the water was breaking with such fury over it that John did not consider it quite safe to attempt a landing.

27

Sunday. Made Make. At sunset saw a Bark go in towards the town, supposed her to be a whaler and she proved to be the Lancer.

30

Monday A.M. Came to anchor off the town. Found the <sup>Bk</sup> Merlin. Capt. David Allen and Brig <sup>of Salva</sup> Pard, Capt. Worth, both whalers and the captain's wives with them. Two English Men of war and one French man of war at anchor here; quite a lively line. Four whalers and three Men of war here at once. John went on shore and Mrs. Allen sent for me to come on shore. In the afternoon I went taking Willie with me, intending to stay all night, but arrangements could not be made for us to be as comfortable as on ship board, considering that John had a very bad cold and seemed real sick; so at nine o'clock we

May 3

June 1



May 1870

30

came on board the ship in Capt. May's boat and he came and staid the night with us. Before coming on board we engaged a pavilion on Royal St. of Madame Forbes & was to take possession in the morning; but John was ~~so~~ sick in the morning and Willie was sick with a cold so that we neither went on shore to prepare our quarters nor to Stag island where we had received an invitation to breakfast at eleven A.M. in company with Capt. Allen and family; but Capt. Worth & wife took our places and went to breakfast.

June 1

Took such traps as we needed and went on shore to our pavilion. We had two rooms in an awful looking old wood colored building, more like some deserted old barn at home, but here considered a very desirable pavilion, much better looking than many of its neighbors. The room fronting the street was the width of the house with a great barn door in the middle and a window without a square of glass on one side, but with a huge board shutter outside. There were two other windows and two other outside doors in this room of the aforementioned description, and the fourth an inside door opened into the second room which had ~~no~~ a window and outside door. The first of these rooms ~~had~~ was papered and had twelve French pictures (small ones) hanging around the sides, representing every stage of drunkenness and just fit for a bar-room. A petroleum hanging lamp suspended from the beams near the center over a table. Another table in the corner



June 1870

June

Half a dozen cane seat chairs, and an easy chair and small mirror composed our adornings and furnishings for the sitting room by day, but at night it was changed into a lodging room for John, Willie and I, by making a bed on the floor. Capt. Macy occupied the second room for lodging and altogether we enjoyed it much after we got settled; it seemed to me like Camp meeting.

I lost about two nights' sleep when we first went to abide in the pavilion for fear of centipedes.

Had never seen any but had an awful horror of them; at last I gave it all up and concluded I must sleep centipedes notwithstanding; after coming to this sensible conclusion, one evening while sitting by the table writing two got on my neck within half an hour of each other and one bit me before he could be got off and the other was taken off before he had a chance. Their bite is not considered dangerous in this climate and is like the sting of a hornet; poisonous or not I don't care to be bitten again. Any number of lizards are to be seen both in the houses and out; they are harmless but disagreeable looking creatures. John slowly recovering from his cold but Willie getting worse all the time requiring the constant care of one of us. We decide to have some one to take care of him and be generally useful to us; so we got a negro woman for our servant (as all who work are here called). But Willie would not go to her at all, seemed afraid of her. She amused me most when



June

1870

she polished the floor. The floors are hard wood stained and polished in the following manner. She wiped the floor with a damp cloth and then rubbed on a little wax and took half the husk of a coconut and putting the hollow of the right foot over the rounding side of the husk and then her hands on her hips with her clothes caught up in her fingers so as not to interfere with the motion of the feet she just capered around on the floor on that half husk making the left foot keep up with the right; It was a really amusing performance to us who had never seen the like before.

While here Mrs. Allen and I made an American Ensign for Mr. Sturges our consul at this place and on its completion we raised it on the flag staff at the Consul's house.

Took several short excursions around the town with Mrs. Allen and Mrs. Worth shopping, find a store in almost every house with a small amount of dry goods, a few groceries and plenty of bottles with drunkenness in them, and indeed I never saw such a drunken place as this and am glad it is not American.

It would be a most convenient thing if I could speak French as that is the language they pretend to speak here; But theirs is not pure. An English place with French language. Sunday. Went on board the English Man-of-war Coesack to church; very interesting services left Willie with cabin boy on board our ship; he acts as though he was perfectly at home



# THE

TUESDAY, NOVEMBER 19, 1872.

We had fully intended to have published the remainder of the evidence in the case of Peirce v. Channell and others, and, also, a summary of the pleadings in the case. We had further in intention to report the case of Shellam v. Leal and another; but, during the course of the addresses of Messrs Newton and Pellereau in the case of Peirce v. Channell and others, some observations were made by His Honor the Chief Judge as regards the propriety of publishing reports of such cases; and, moreover, words of a similar import fell from him during the arguments in the action of Shellam v. Leal and another. This fact led us to examine the Law regulating the matter,—it runs as follows:—

Article 292 of the Penal Code says: "Any publication of the acts of Government, or of the proceedings at the audiences of any Court or Tribunal, if made with inaccuracy and bad faith, shall be held to be a defamatory libel, and shall be punished as provided for in the preceding article."\* Again, "Under the like penalty, no publication can be made of the proceedings in any suit which shall be pending before any Court." Article 293 says: "It is likewise forbidden to give any report by means of printing or published writings, of any prosecution for outrage, or slander, or for defamation, under pain of a fine of from ten to fifty pounds sterling. It shall be lawful only to announce the complaint, and, in all cases, to publish the judgement."

In the presence of these provisions of the law so decisive in their nature, and of the remarks of the Chief Judge, we think it preferable to abstain from printing any thing further respecting either of the above mentioned cases.

We have at the same time to express our regret that so much of the evidence in the first case should have been published in our columns, but, then, it was done at the express request of the late Mr Channell, who did not wish that any thing in connection with the case in which the newspaper he founded and edited was concerned, should be held back from the public. This wish was, there can be no doubt of it, essentially a straight-forward and an honorable one; but as the law stands, it cannot be lawfully carried

We have, however, consolation, that in stopping short in our report it cannot be fairly said that justice has not been done to the plaintiff, since all the evidence given in Court up to the close of his case has been published with the opening address of his Counsel. And, although some of the depositions of the witnesses heard for the plaintiff were not printed, for they were examined after the close of the defendants' case, yet we believe we may assert that the most important part of the plaintiff's case has been placed before our readers, whereas some depositions telling, in our opinion, greatly in favor of the defendants have not been given. We hope, therefore, that the former direction of this newspaper will be considered, as it ought to be, free from any charge of unfair conduct.

But, while we submit to the exigencies of the law, we feel obliged to protest against what we consider its errors. Trials before a Court of Justice in which the public press is concerned, are essentially matters of public interest, and should therefore be reported as fully as possible. It is quite right that a wilfully inaccurate report, or one made in bad faith should be punished, but we cannot imagine any good reason for prohibiting an honest report of cases, even when they relate to slander and defamation. Surely, a case argued in full Court is public property, and what good end can be served by keeping its details in the dark we are at a loss to understand. We submit therefore that the law is defective and should be altered.

This seems to us so clear as hardly to admit of any argument, but still it may be as well to point out, that our law actually defeats one of the main objects for which a party considering himself libelled in any way, would bring an action; for we may conclude that he does so to vindicate his character. On the other hand the defendant must desire to shew either that what he said was true, or else that there were circumstances which either justified or excused its publication. But if the proceedings at the trial are not made public, how can this be done? We might illustrate the necessity of publicity in these cases by citations from English authorities, but we feel that it is needless to do so.

It will be observed that the second paragraph of Article 292 prohibits the publication of any proceedings of the cases pending before the Court, but we may declare, at once, that although we shall carefully abstain from publishing any report of the actions specified in Article 293, and also of any trial in which the private character of parties is attacked, we shall continue to report the proceedings of the Court as we have hitherto done, for if we are to wait for the judgment in every case, it would frequently occur that our reports would only appear after the causes heard had lost much, if not all of their interest.

\* That is to say, fine and imprisonment. C.G.



To the Editor of the *Commercial Gazette*.  
Sir,

I beg to thank you for publishing my letter of the 31st ultimo in your issue of to-day. I have not the slightest intention of disputing your comments on it, (of course I don't acquiesce in them;) it is sufficient for me that my statement has been made public. I am quite willing to leave the matter so far as I am concerned in the hands of your readers, among whom I count many friends, but I should like to make a very short remark on that part of your leader which treats of the valuation of the "*Amie Ann*" at £1.10 a ton, as compared with her Insurance for £2,400.

That the *Amie Ann* ought to be abandoned I have shewn, and the valuation of £1 10 per ton has to do, not with her insured value in the United States, but with her value in her damaged condition in this Port, and prices usually obtained for vessels situated as the *Amie Ann* now is. The following list which might be considerably increased if needful will prove that £ 1.10 a ton is a very fair valuation:—

Name.	Tons	Sale Price.	Price per ton.	New Name.
			£ s. d.	
Perigny .....	467	\$1100	0 9 4	'Bhoal Nugger'
Bailly de Suffren .....	537	3105	1 3 1	'Stag'
Etienne .....	402	3225	1 12 1	'Mamoda'
Johanna Maria .....	702	4200	1 3 11	'Akbar Shah'
Villa Eugénie ...	277	1905	1 7 1	'Falcon'
Numa Vidal .....	545	3850	1 8 3	'Morning Star'
D'Artagnan .....	256	2150	1 13 7	'Fisherman'
Florida .....	305	3000	1 19 4	'Florida'

If you can extend your indulgence so far as to publish this I shall feel obliged and will trouble you with no further remarks.

I remain, your obedient servant,

D. WALES.

4th Sept. 1872.

## LEGAL NOTICES.

MAURITIUS—IN THE COURT OF  
VICE-ADMIRALTY.

**TO-DAY Tuesday** the fifteenth instant, at 1 P.M., in virtue of a decree of the Worshipful Judge given on the fourth October instant, in a case of Douglas Wales, Harbour Master against the vessel *Amie Ann*, the undersigned will sell by public auction, in front of the Custom House, the said barque *Amie Ann* burthen 220 tons, with her masts, standing and running rigging, &c., such as she will stand at the moment of adjudication.

15th October 1872.

G. A. RITTER,—Marshal.

In virtue of an Order of the United States Consul

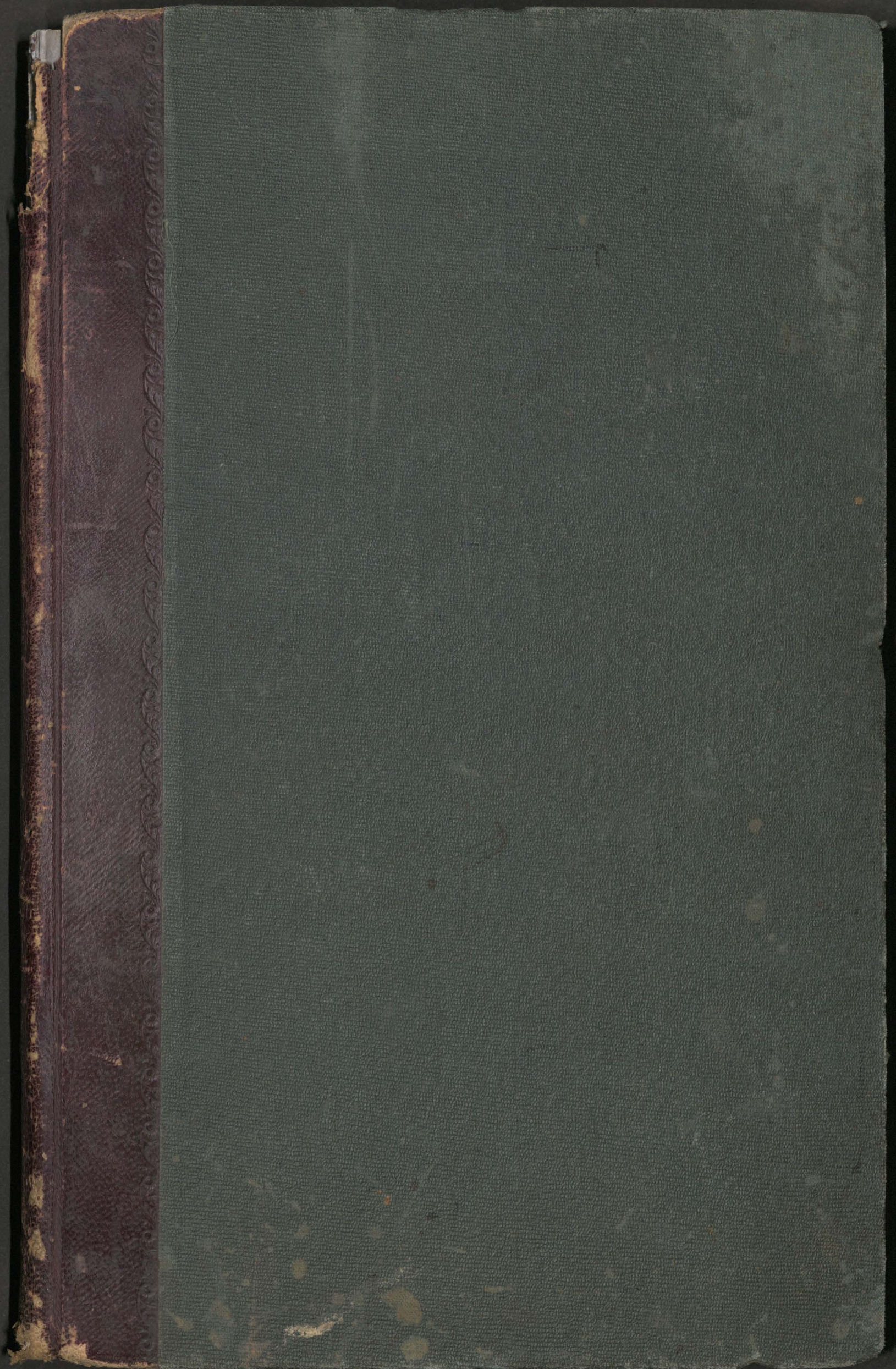
**CAPTAIN CHARLES BABSON**, of the ship **New Era**, will receive offers to-day Tuesday at noon, at the office of the undersigned, for the loan of the sum of **twenty thousand dollars** or thereabouts, required to defray the necessary disbursements for repairs at this port, to be secured by Bottomry on the said vessel, her cargo and freight.

The **New Era** is bound to Boston direct, where the Bond will be made payable twenty days after her safe arrival.

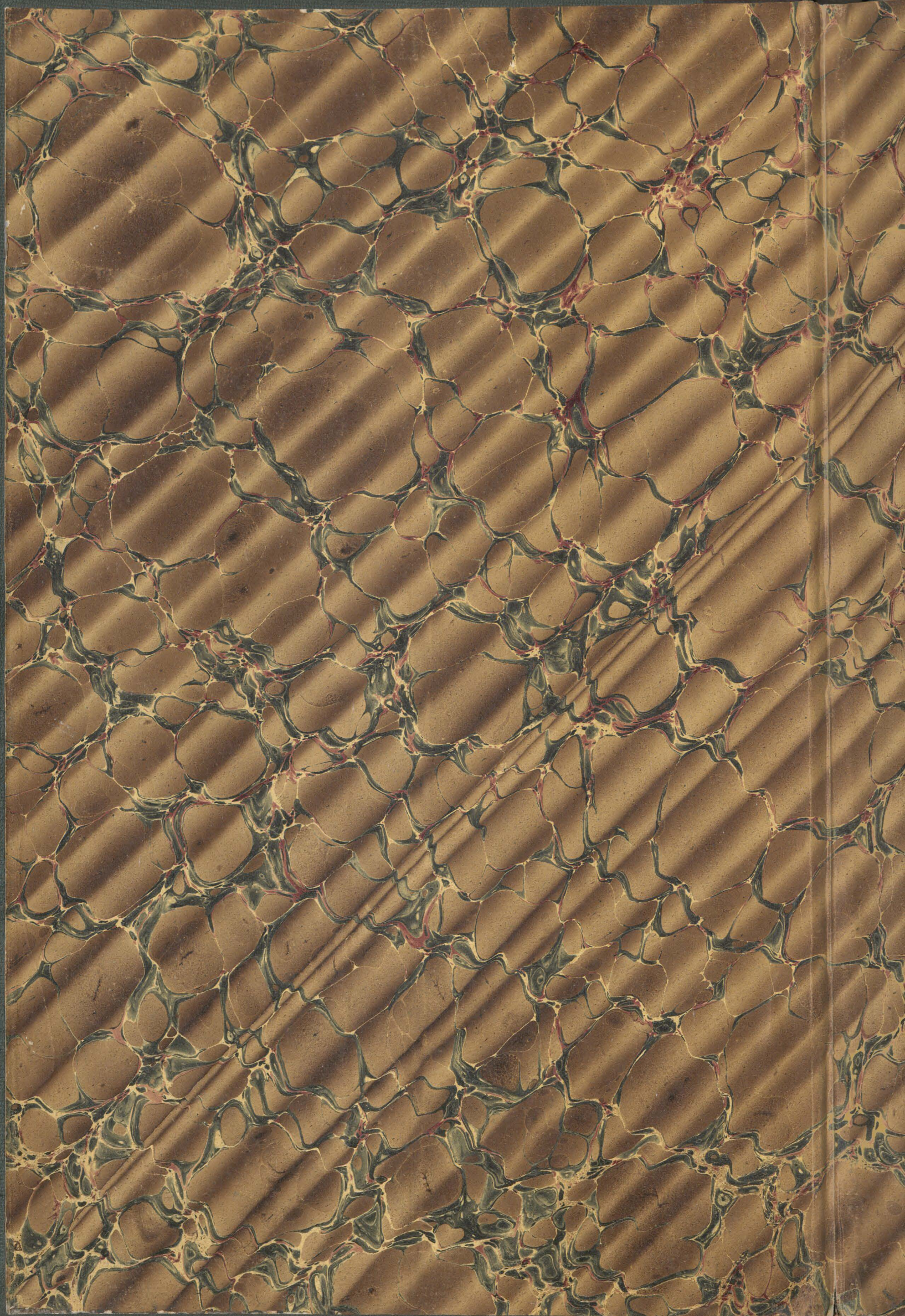
Mauritius, 4th June 1872.

BLYTH BROTHERS & Co.

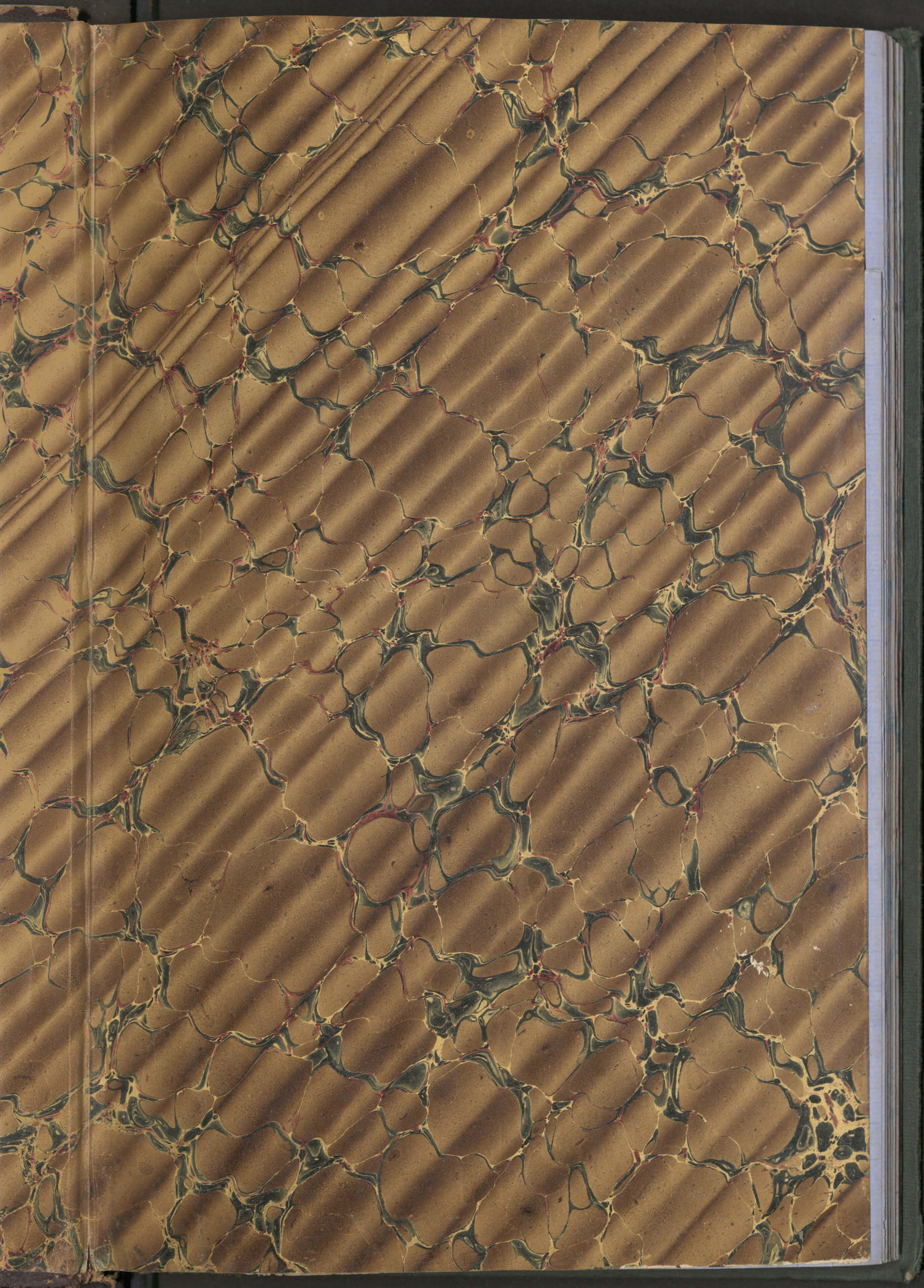














Anxious to meet the wishes of Captain Wales, who considers himself unjustly accused by the American Consul, we have decided to publish his letter, although it relates to a case pending before the Supreme Court in which we are personally interested, and in which he was a witness brought forward by our opponents.

But we cannot allow this letter to be published without a few observations of our own. Captain Wales tells us the worth of the *Amie Ann* when new could not, in his opinion, have exceeded two thousand pounds. Eleven years wear and tear, he continues, reduced that value quite 50 per cent., and because of the damage she sustained the Surveyors considered her value diminished to £1.10 per ton, say £330. How is it, then, we would ask, that this vessel when she came into this port was actually insured for £2,400? There was certainly here a great temptation for the owners and those who represent them to find a means of throwing the vessel on the hands of the underwriters.

The *Nota Bene*, added to the survey of himself and Captain Barclay, Captain Wales tells us was made at his own suggestion, and further he says the Report and the *Nota Bene* were signed at the same time. We do not dispute this latter fact, but we are fully aware that the *Nota Bene* was drawn up some time after the Report was made, no doubt after the Surveyors had asked questions of the Captain and Agents so as "to arrive at the truth."

Captain Wales tells us, also, that he knows nothing of the differences between Captain Peirce and his crew, but that as an old Master he is naturally *inclined* to the Master's side of the question! We are surprised at this admission of Captain Wales. It was indiscreet and imprudent on the part of Captain Wales, because he was the Master of a vessel some 20 years ago, to proclaim that he naturally *inclines* to the Master's side of the question; for may we not reasonably suppose that if he *inclines* to the Master's side against his crew, he might involuntarily have been *inclined* to favor the Master, when as Surveyor he was called in as an intermediary between the Master (who represents the owners) and the interests of the underwriters?

On the whole, we can scarcely conceive that Captain Wales has improved his position, for, as we have shewn, on several principal points his defence has been particularly weak and unsatisfactory.



76  
The following letter has been sent to us for publication by two of the witnesses to it. We leave it to speak for itself:—

U. S. Consulate, Port Louis, Mauritius,  
February 5th 1872.

On the above date personally appeared before me, Nicolas Pike, Consul of the U.S. of America for Mauritius and the Dependencies, Joseph Francis, seaman on board the bark *Pioneer* Capt. Hazard and formerly of the *Amie Ann* Capt. John Pierce, and testified on solemn oath to the following:—

One day last week, the exact time I forget, Capt. John Pierce of the *Amie Ann* sent for me to come on board his vessel. Philip G. Lord, John Laurens and myself went on board. We went into the cabin together. Capt. Hazard, Capt. Pierce and Mrs. Pierce were there. Capt. Pierce then asked me if I signed the letter of Henry Williams published in the newspaper. I said no, I could not write. He then asked me if I touched the pen. I said that I did. He then asked me two or three times to try and write my name on a paper which Mrs. Pierce had written. I told him again I could not read or write and asked him why he wanted me to sign a paper. He then said it was to send home to America to prevent me getting into further trouble and that I might get a settlement of my voyage. I thought it was all right and I touched the pen. I felt very bad when I found out that my name was in the newspaper. I saw Capt. Pierce beat Dennis Shay, Henry Williams, the cook, Philip G. Lord and Levi Walker in a cruel manner. Lord was beaten while we were on shore. He seized him by his whiskers, and threw him on the sand and when down jumped upon him. Our provisions were so bad that I had the scurvy, and blood marks were over my body. The bread was full of maggots so that we could not eat it. I was afraid of Capt. Pierce as well as all of the crew, and we did not dare to expose our minds. Whatever I have testified before the American Consul was the truth.

JOSEPH FRANCIS, X his mark.

Witnesses:

WM. J. BRIGGS,

HENRY GLENN,

CHARLES PIERCE.

J. Nicolas Pike, Consul, do hereby certify that the foregoing is a true copy of the original now on file in this office.

NICOLAS PIKE,  
Consul.

U. S. Consulate, Port Louis,  
February 5th 1872.



Anxious to meet the wishes of Captain Wales, who considers himself unjustly accused by the American Consul, we have decided to publish his letter, although it relates to a case pending before the Supreme Court in which we are personally interested, and in which he was a witness brought forward by our opponents.

COMMERCIAL



# PORTAL GAZETTE

PORT LOUIS, MAURITIUS.

MONDAY, FEBRUARY 5, 1872.

On the 31st ultimo we published a letter signed H. Williams complaining of the ill treatment he and others of the crew had received from Captain Pierce of the Barque *Annie Ann*. The letter had annexed to it a declaration of the officers and crew vouching for the accuracy of the facts stated. After the letter appeared four of the seamen sent us declarations stating that they never signed the letter although their names were attached to it. We lost no time in giving them whatever advantage they and their advisers might hope to derive from the publicity of the fact. Since then we have made inquiries at the office of the American Consul and we have been allowed to see declarations of three of these people

made on oath before the Consul and bearing their signature or their mark. We may even say that the declarations are stronger than the letter against Capt. Pierce, and if it could be proved that their signatures to the letter had been forged the circumstance of their having signed a declaration equally strong if not stronger, makes no alteration in the facts as originally stated.



Anxious to meet the wishes of Captain Wales, who considers himself unjustly accused by the American Consul, we have decided to publish his letter, although it relates to a case pending before the Supreme Court in which we are personally interested and in which he was a witness brought forward by our opponents.

But we cannot allow this letter to be pub-



# GAZETTE

PORT LOUIS,

FRIDAY, FEBRUARY 2, 1872.

During the month of October the American Whale Barque *Pioneer* Capt. J. S. Hazard put into this port from cruising. Complaints were made by the officers and crew to the American Consul, and the charges against the Captain of brutality towards them were after long examinations seen to be so well founded, that he felt compelled to discharge the men from the *Pioneer* as the laws of the United States require in such cases, charging the Captain three months extra wages, which under such circumstances he is bound to pay, or have his ship's papers retained till he does so. Many of the crew were sick and marks of ill-treatment were but too plain on some of them.

This Captain has been constantly in trouble. He was heavily fined last year for refusing to pay port charges at Johanna and wilfully leaving behind four of his men destitute on that island. They were fed and cared for by the King of Johanna for 4 months when he sent them to the French Governor at Mayotte, who forwarded them to Seychelles in a French Frigate, whence the Consul received them they being sent to him by Mr Commissioner Franklin. The King addressed a letter on the subject to the President of the United States and instructions were sent to pay him £50 for the keep of the men, and an Admiral's ship the *Colorado* was sent to Johanna with a present to him for his kindness to these poor men.

At Seychelles, Capt. Hazard again got into difficulties with his men and threatened their lives; he had been heard to say he had shot a man during his last voyage and would do so again. Among his crew that have been discharged are 9 Americans, 3 English and 7 Portuguese. These poor fellows have worked hard for 30 months and the Captain even now

refuses what few clothes they have on board-ship.

We believe the Consul has reported this case and that of the *Annie Ann* to his Government.

The rainfall in Port Louis during January equalled 9.06 inches, of which 4.35 inches fell in the two last days of the month.

Port Louis, 31st January 1872.

To the Editor of the *Commercial Gazette*,

Sir,

In this day's issue of your paper I notice a letter written or at least signed by Henry William, cook, barque "*Annie Ann*," and attached to that document I find to my surprise my own name certifying to the truth of the statements made by Williams.

I never signed that document to my knowledge and cannot vouch for the truth of it.

I remain, Sir,

Your obedient Servant,

PHILIP G. LORST,

Formerly seaman "*Annie Ann*."

REMARK.—Besides the above letter we have also received letters from Jose Frank, John Laurens and Theodore Froberg formerly of the crew of the barque *Annie Ann* declaring that they did not sign the letter we published in our last issue. The two first state that they never received any bad treatment from Captain Pierce, and the letter which bears the X of John Laurens asserts that he never witnessed "any brutality to any of the crew."

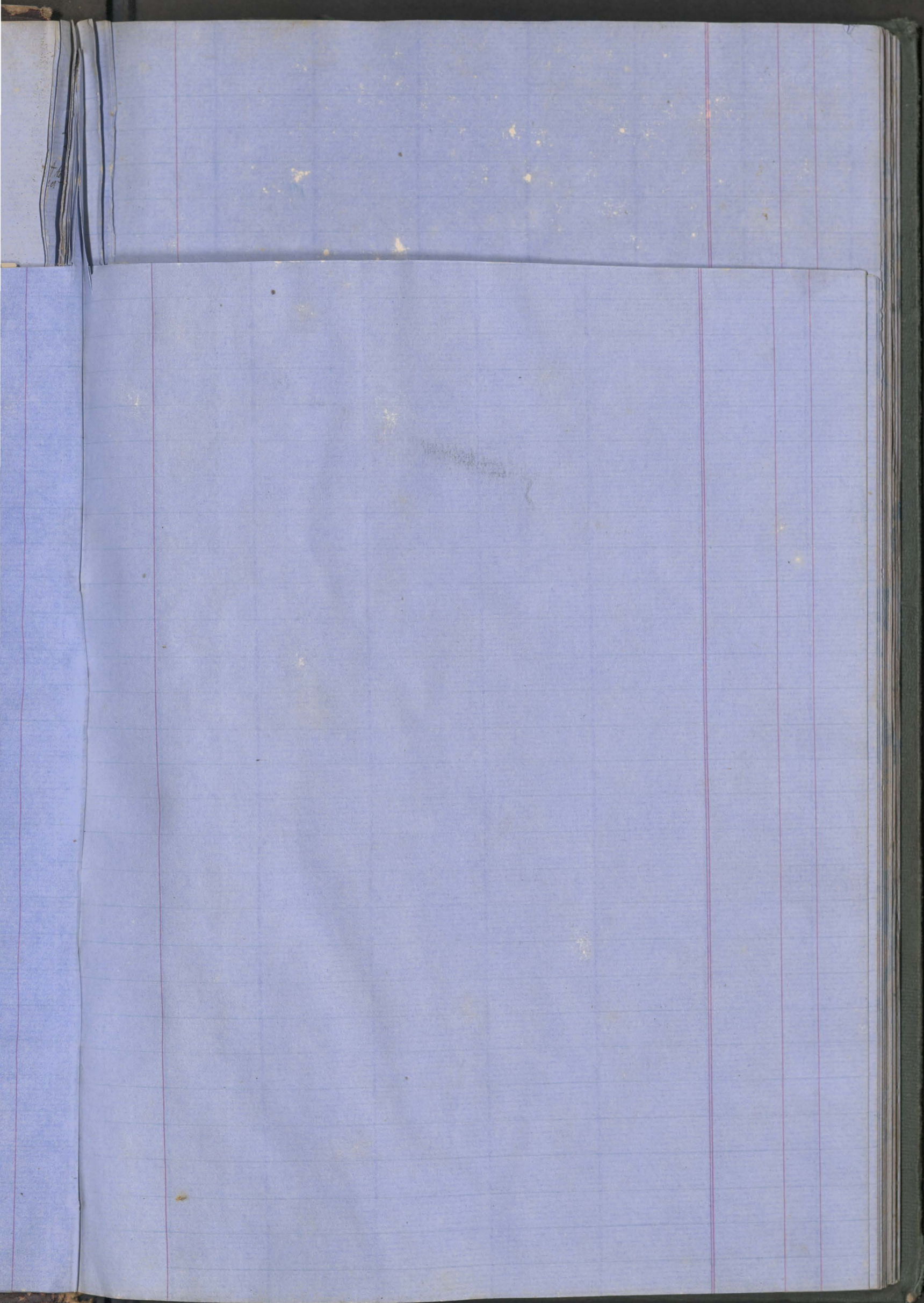
All we can say is that the letter we received and published bears their names.



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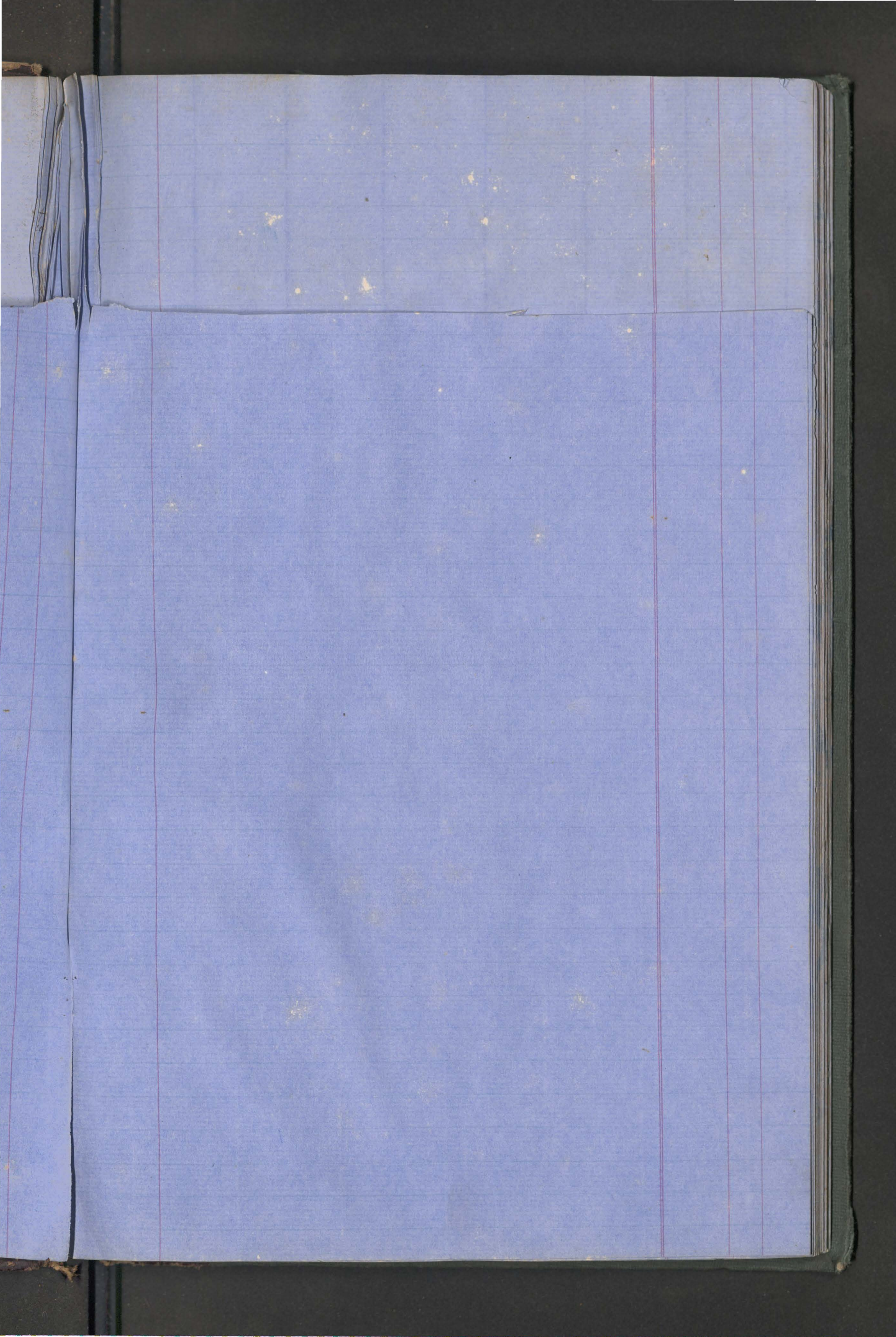




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Dr. Capt. John C. Peirce

1865

11 Mo. 13 <sup>th</sup> 1866	To Cash paid Mrs. Peirce	900	1/11/85	4 Mo. 1
4 Mo. 23 <sup>rd</sup>	" 577 Galls. Whale Oil	88 507	76	
	" 1970 " " "	93 1832	10 8/11/51	11 Mo. 1
6 Mo. 4 <sup>th</sup>	" 626 " Spermaceti	2 - 1232	1/11/77	1866
7 Mo. 13	" 251 lbs. New West Bone	1.50 376	30 11-20	6 Mo. 6
9 Mo. 27 1867	" 782 " Arctic	1.40 1374	80 8/4/58.21	7 Mo. 13
4 Mo. 24	" 4/32 Prop. Bk. Addison up 6584.89	341	73 1/11 2.79	9 Mo. 27
6 Mo. 13	" Balance of interest	1	06	12 Mo. 1
	" Balance to Me	12	04	

\$6597 99

1867

7 Mo. To Cash to Balance \$ 45 60

July 26<sup>th</sup> 1867 Received of J. B. Richmond \$45 00  
Being balance due John C. Peirce in the settlement  
of the acct. of Bark Addison.

John C. Peirce  
By Anne A. S. Peirce Atty.

July 26<sup>th</sup> 1867 Received of Lorence Peirce \$858 68 in full  
for purchase of my one eighth of Bark Addison.

John C. Peirce  
By Anne A. S. Peirce Atty.

July  
Thirty  
being  
Addi  
\$3373.



Isaac B. Richmond

Cur.

1865

4/7/85	4 Mo.	1	By your 1/16 Say as Master in oil shipped to Europe.	1577	21	2/2/208.16
11/1/57	11 Mo.	1	your 4/32 Prop Balance of Bk.			
1/1/77			Additions a/c	590	86	4/1/2 57.33
11/20/77	6 Mo.	6	Cash	90	23	1/1/7 5.57
8/4/58	7 Mo.	13	4/32 of Chgs on Bone sold in N.Y.	1	80	11/1/ 2.11
1/4/77	9 Mo.	29	4/32	8	17	8/1/4 .34
12 Mo.	1		your 1/16 Say as Master in oil & Bone per Arctic & Ceylon	1743	78	
			your 4/32 Prop Balance of Bk			9/1/2 125.73
			Additions a/c	2185	62	
3 Mo.	30		Cash	275		2/1/3 3.35
4 Mo.	9		" " 6528.59	55	12	2/4 .60
6 Mo.	13		your 1/16 Say as Master in Bone per Marion 855.98 & years interest 6597.99	67	40	
			Bal. int.			1.06
402/1/77				6597.99		402.19

1867

6 Mo.	13		By Balances of a/c	12	04	
			4/32 Prop of Ins. on oil & Bone per Ceylon & Arctic	31	64	
			1 years Interest	1	92	
				45	60	

July 26<sup>th</sup> 1867 Received of Lorence Price & Joshua Richmond Thirty Three hundred & Seventy Three dollars & ninety cents being balance due me for my Say & ownership in Bone Additions.  
 3373.99  
 By Anne B. S. Price & Co.



Capt. John C. Price

in acc with

L. Price & J. Robinson Agents

1867

Mar 25 To wages paid to Capt. C. Price 487.16

Apr 10 " Cash for Prof from sale of Ship 858.68

May 19 " Balance of sixth acc 226.37

" Amount of Ship bill 31.94

20 " Cash 3373.99

4978.14

Credit

1867

Apr 10 By your 1/32 Prof of Balance of sale of Ship 858.68

May 19 " amt. of your pay as master as per statement 2094.66

June 26 " your 1/32 Prof of Balance Back Holliston acc 2024.80

4978.14

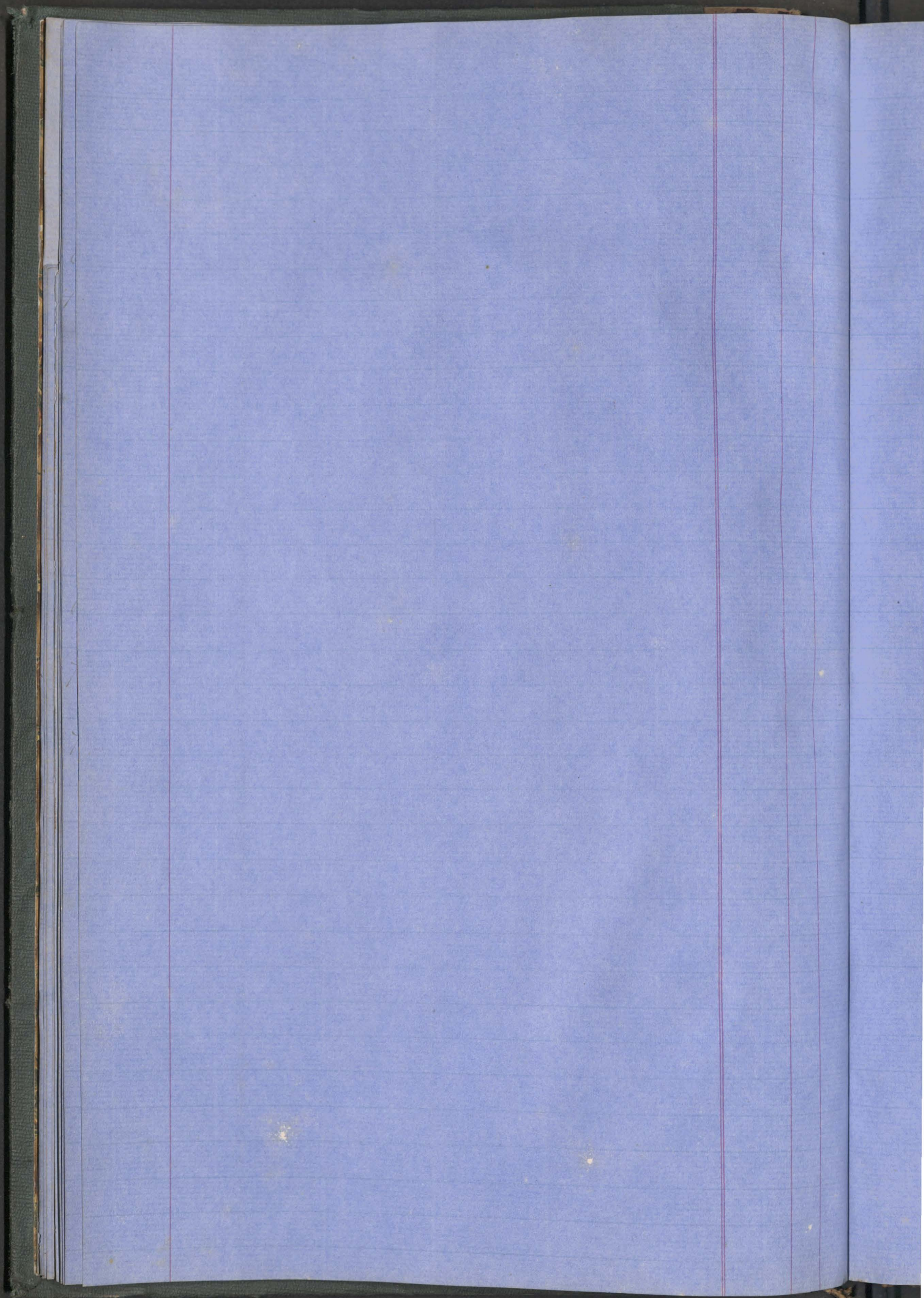


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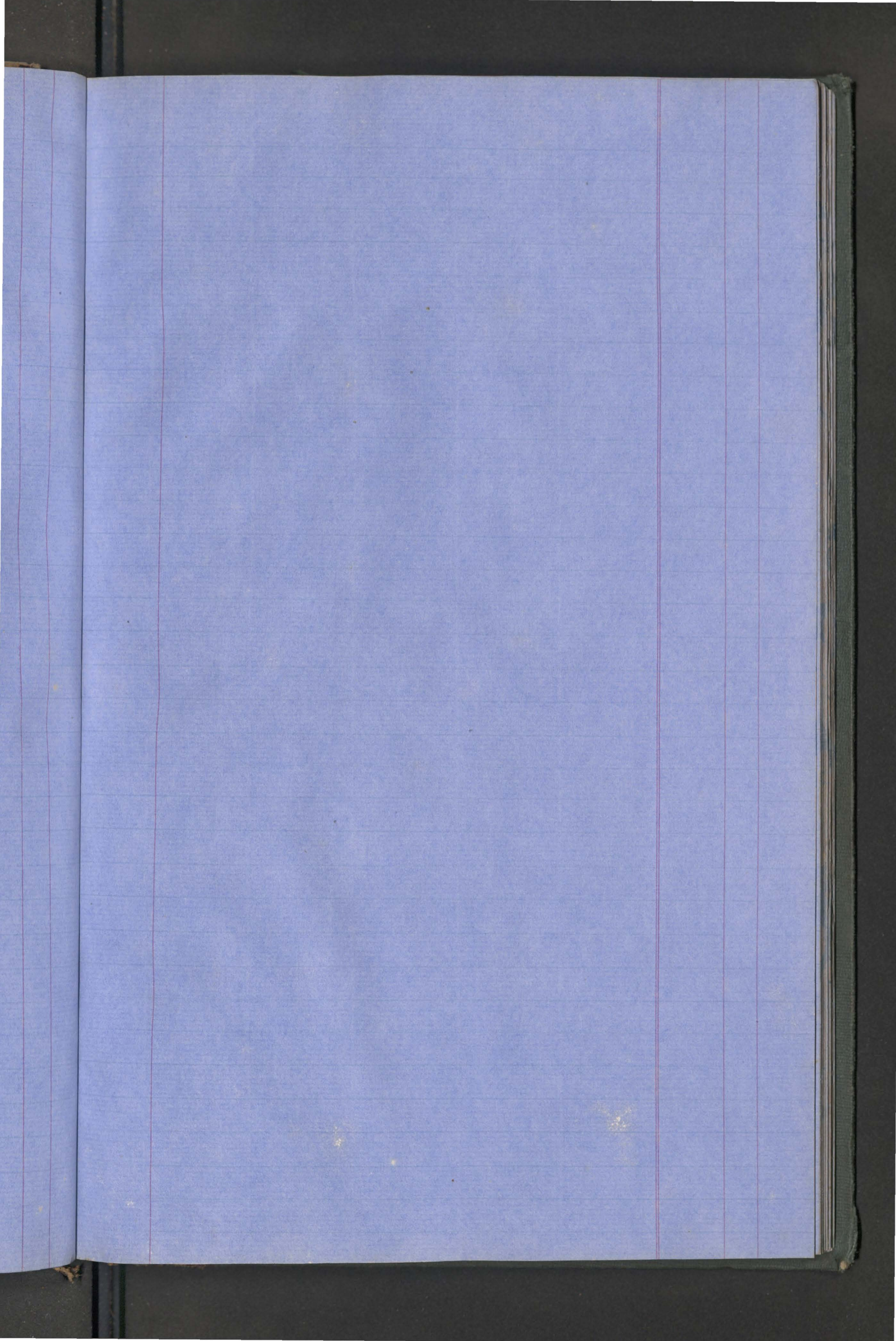
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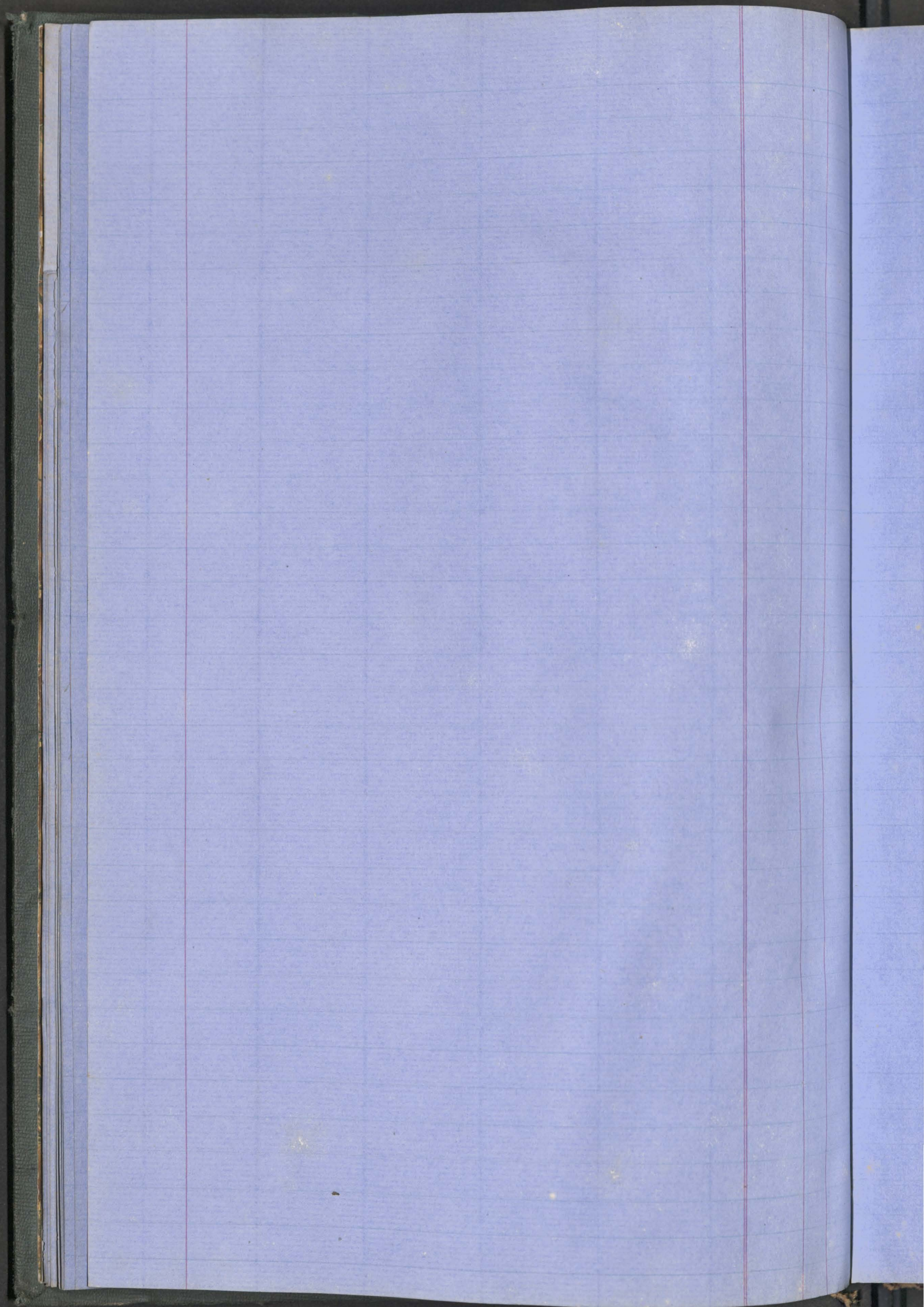








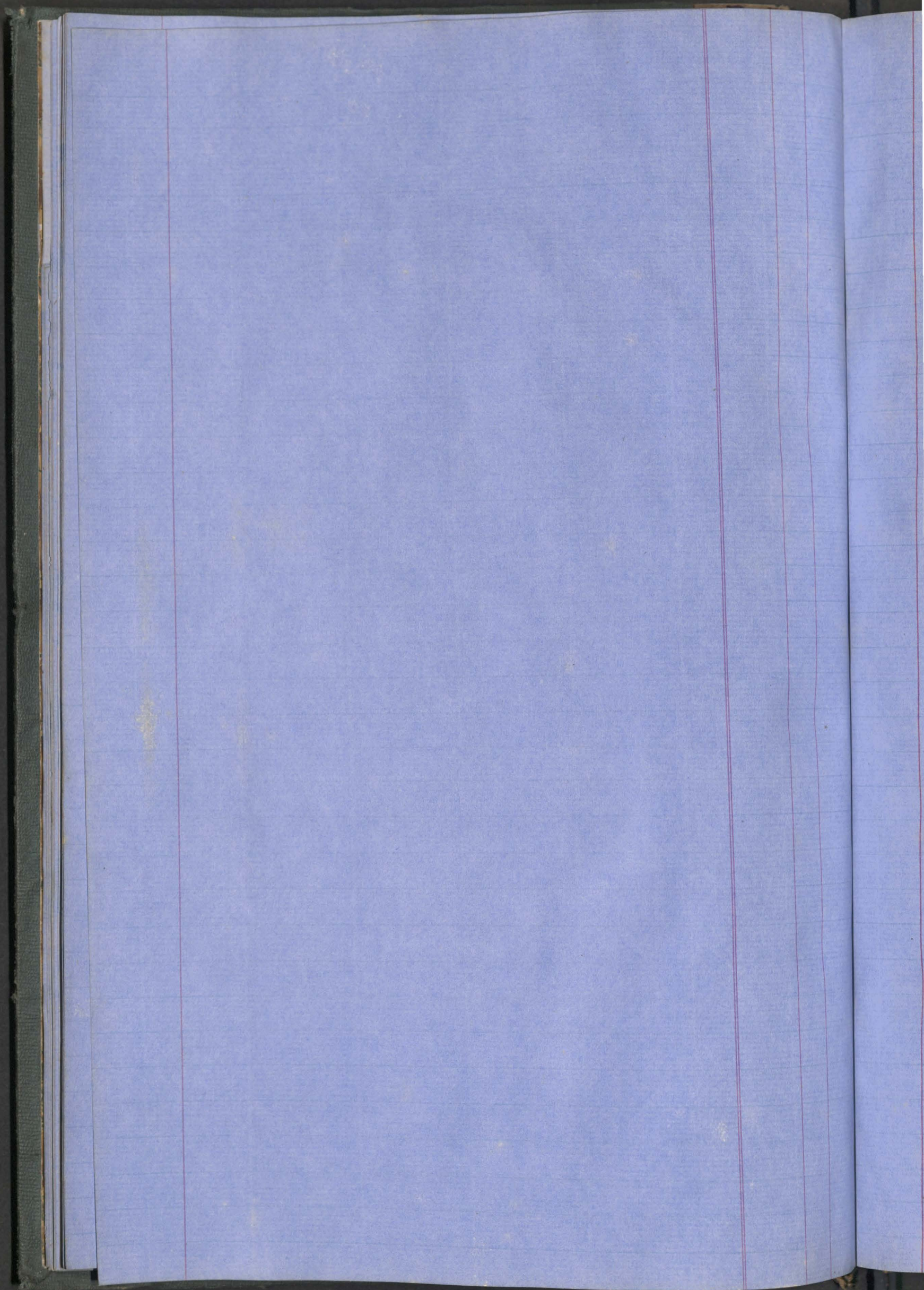








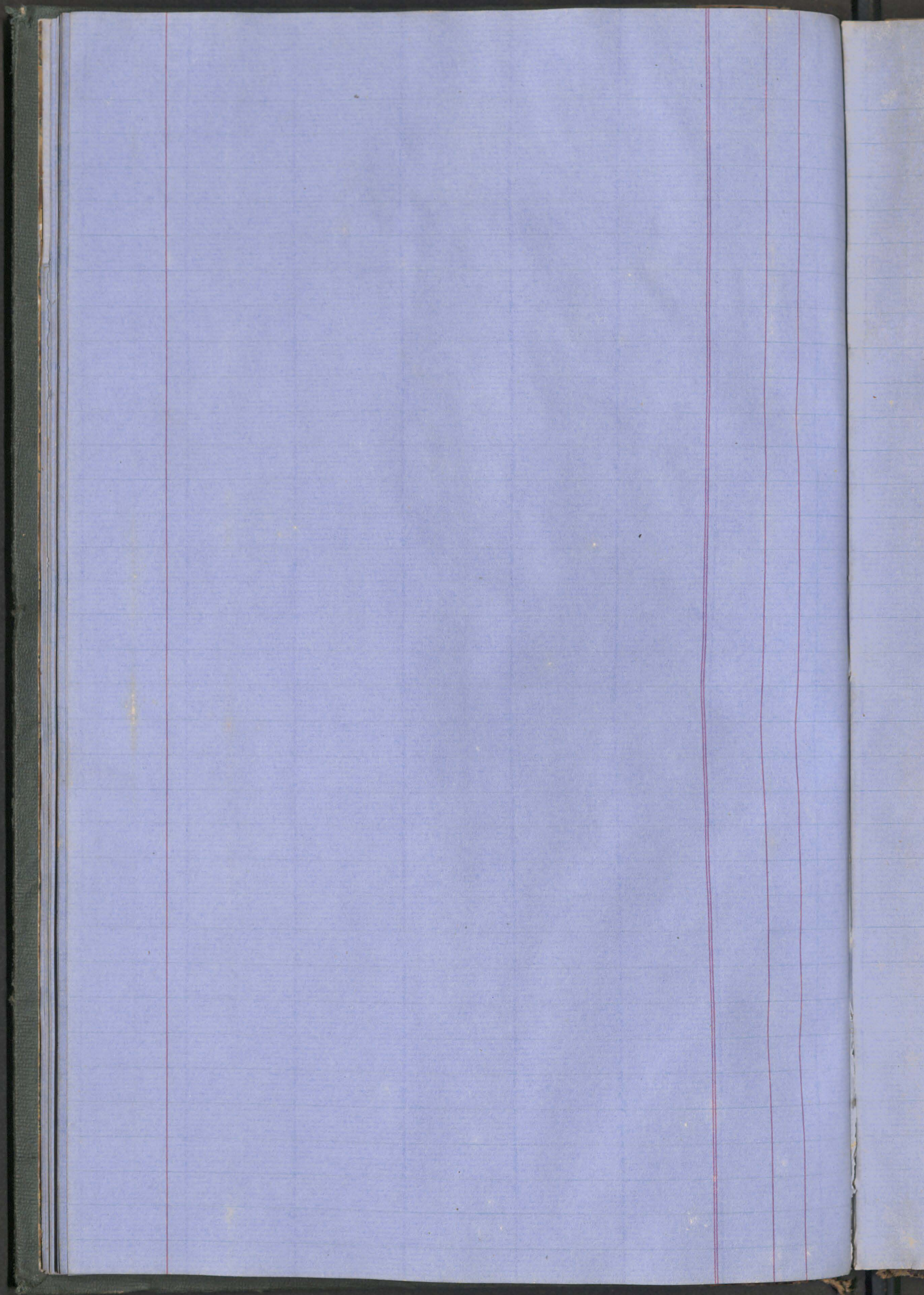




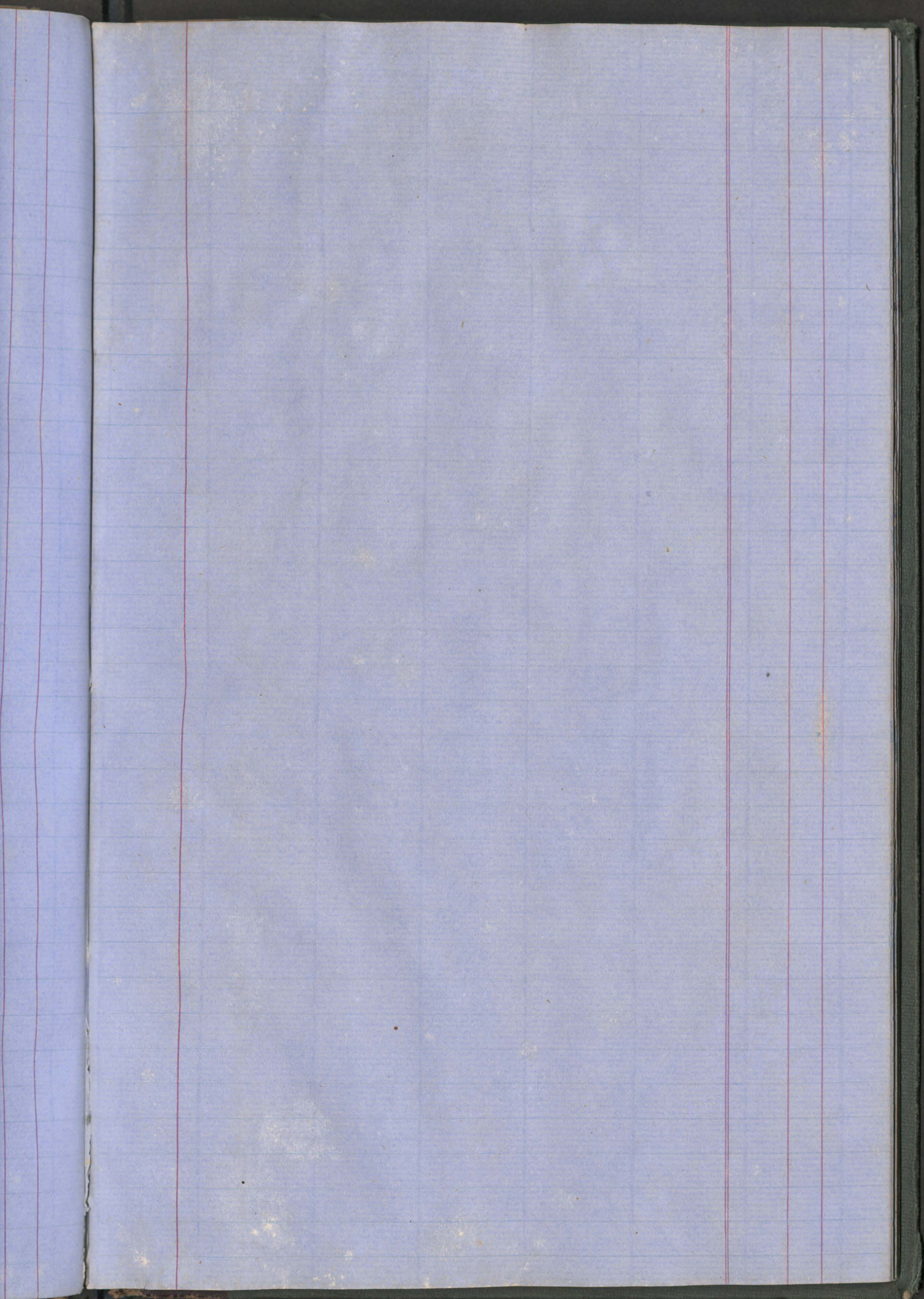




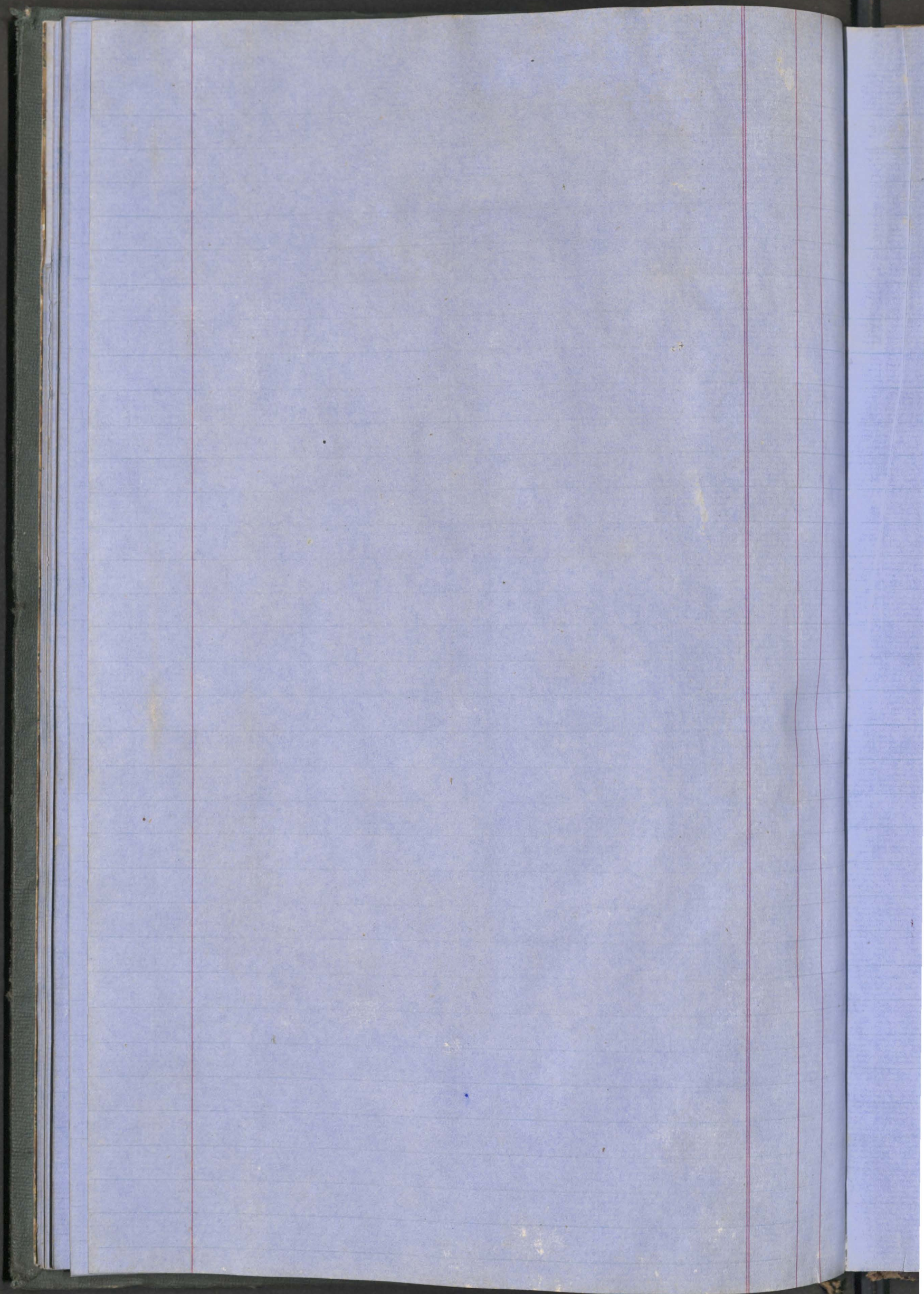














MONDAY, FEBRUARY 12, 1872.

On the 31st ult. we published a letter from Henry Williams, cook on board the American whaler *Amie Ann*, complaining of the treatment he and others on board had received from Captain Peirce. The letter was followed by a written confirmation of the truth of its contents by the Officers and Crew of the above vessel. We accompanied the letter with some observations. Captain Peirce has summoned us before the Supreme Court to pay him five thousand pounds for having injured his character and reputation.

As some of the crew leave this day, Saturday, by the *Isabella Blyth* a special permission was obtained to hear their evidence, and they have been examined before the Master.



# COMMERCIAL

PORT LOUIS, MAURITIUS

## SUPREME COURT.

Wednesday, 29th May, 1872.

Before His Honor Sir C. F. Shand Kt. and the Honorable N. G. Bestel.

PEIRCE v. CHANNELL AND WIFE.

It will be recollected, that, in our issue of the 30th May, we published a conversation, between the respective counsel and the Bench, with reference to this case. Mr Pellereau, who is for the plaintiff, asked for an adjournment on two grounds: (1) that it was mail week and (2) the illness and consequently unavoidable absence of his attorney. The Chief Judge inquired whether an opening speech could not be delivered, and Mr Pellereau intimated that he could not satisfactorily do that. Mr Newton, who is for the defendants, showed the untenability of the arguments that Mr Pellereau had advanced in support of the application, stating that if there was any inconvenience to the other side it was the fault of their now absent attorney who had insisted on the case coming on that day, and concluded by affirming that his client was ready to go on. The Chief Judge intimated, after that statement the Court could do no more than take the case of *Martin Moncamp v. Bellett and ors.* (expected to last an hour to an hour and a half) and that the witnesses must be in Court again at 1.30 p.m. Accordingly at the time mentioned the case was again called.

Mr. Newton wished, before his learned friend commenced his observations, to say that, acting upon the suggestion thrown out by their Honors, it had been agreed simply that day to break ground, and to defer the examination of witnesses to another sitting. There were a certain number of witnesses in the case; but he understood, from the communication he had received from the other side, that it was probable that it would not be possible to finish the evidence of the plaintiff that day; and it would be meeting the convenience of the other witnesses if they were allowed to go away.

*The Chief Judge.*—Very good.

*Mr. Newton.*—What day should be fixed for their return?

*The Chief Judge.*—That could be arranged by yourselves. Friday had better be avoided, as that was mail day. He had thrown out the suggestion, and he was glad to see its adoption.

*Mr. Newton.*—It was on Your Honor's suggestion that communications were entered into between the two sides, and the result was the arrangement submitted to the approval of the Court. He believed Tuesday next would suit his learned friend.

*Mr Pellereau.*—Tuesday next would do very well.

*The Chief Judge* did not know of there being any special cause set down for hearing on that day.

*The Registrar* said there was a case.

*The Chief Judge.*—Then, gentlemen, you had better say Wednesday.

*Mr Newton* would prefer Tuesday.

*The Chief Judge.*—Very good, but you must take your chance. Now then, who represents the plaintiff.

*Mr Pellereau* said he was for the plaintiff. This was an action in which his client, John Cleveland Peirce, lately master of an American barque named the *Amie Anne*, claims from Mr. & Mrs. Channell as editor, publisher, and proprietor respectively of the newspaper known as the *Commercial Gazette*, the sum of twenty-five thousand dollars as damages for a false, defamatory, and slanderous libel published by the defendants, respecting his client. If the facts, which had been published by the newspaper were true, they were so atrocious indeed, that, if they were believed by the community here, and if they were believed in the United States (where copies of the letter that had been published had been sent), his client's reputation and position as a ship master would be totally lost. He was charged with inhumanity; he was charged with having forgotten all the duties incumbent upon him as master of a ship; he was charged with assaults, and violent battery upon some of his crew; he was charged with attempting to deceive the Insurance Company; and in fact all the accusations were of the deepest dye. He would before



# CIAL GAZETTE

S, MAURITIUS.

making further observations, read the letter on which the action was mainly founded and he was sure all who heard it, would agree that if the statements therein contained, nothing, if they were true, could be said more atrocious of a man.

*The Chief Judge*—In what number of the paper did that appear?

*Mr. Pellereau*.—In the number for the 31st Jan. 1872. He would ask their Honors, not to forget that Capt. Peirce was not a member of this community, that this was not the country in which all the facts should have been published, and that, therefore, their publication must have been out of malice. There was some motive, and that a malignant and atrocious one, for the publication of that statement, and though, Mr and Mrs Channell had not composed that statement, they had published it; and the fact of such a publication, in a community to which his client did not belong, showed that there must have been an attempt and concoction between the Defendants and some one else who had taken a dislike to Capt. Peirce, and who wished to injure him in his own country. Why!—the statement was published when some of the seamen had gone away, when some of the evidence on which Capt. Peirce would have most relied had left the country; and it was published in a community where Capt. Peirce had certain connections, where his ship might have to be, as it had since been, abandoned, and where he might have to seek employment: and it must have been to prevent him for obtaining employment that this defamatory statement was published. He would prove, from the whole tenour of the letter, that there was a distinct intention of defaming Capt. Peirce's character. The first document in the case was a letter purporting to be addressed to the Editor of the *Commercial Gazette* and dated 12th December 1871. It was headed "Port Louis, Mauritius, Indian Ocean." That very heading must show to their Honors that, at first, the letter was not intended for publication here, but that it was at the instigation of some one, who was not

the writer, that it here saw the light. No one, meaning the letter for publication here, would have so headed it; but he would prove, by letters that would be given in evidence, that that was the general way of heading correspondence from here to America. From that he deduced the fact that the letter was not originally intended for publication in Mauritius. By what manoeuvre it obtained insertion in the columns of the *Gazette* would no doubt appear during the trial, and the disclosure would not redound to the honour of the defendants. The letter was signed "Henry William," cook of the Barque *Amie Anne*. For a cook, he must say, Henry William gave a most graphic account of all that was alleged to have occurred. No doubt cooks could be found who were clever men, but they were rarely found to be able to read or write; and he could not doubt, that all, who heard the letter, would agree that it was not the style that would have been adopted by a cook. The letter was headed "Port Louis, Mauritius, Indian Ocean, December 12, 1871," and was addressed to "the Editor of the *Commercial Gazette*." The letter runs as follows:—

"Port Louis, Mauritius, Indian Ocean,  
December 12th, 1871.

"To the Editor of the *Commercial Gazette*.

"Sir,

"It has come to a crisis: that the management and treatment of seamen on our American Whalers by the Masters, and in many cases by Officers of the same, should be fully exposed, I therefore intend to give a detailed account of our Ship, Voyage, Master &c., stating names in full, for I do not fear laying myself any way liable in the least for telling the truth, for which I will give my life as a voucher.

[STATEMENT.]

"On the 24th June 1869 the Barque *Amie Ann*, John C. Peirce, Master, his wife, child, Officers and Crew, numbering in all twenty-six, cleared the Port of New Bedford for a whaling voyage not to exceed forty-eight months.



All went smoothly for about four months when the Captain called in at Floris, one of the Western Islands. A boat was sent ashore for some purpose, but orders were given by the Captain that none of the boat's crew should leave the boat, except the Officer. While laying at the beach (this was at about 11 p. m.) one of our men jumped out of the boat and was going to a house when he was caught by the Officer and taken back to the boat. After returning to the Ship, the Captain kicked, struck and knocked the man down, bruising his face in a terrible manner, (this man name was Denis Shay, seaman). Not satisfied with this, Capt. P. sent Shay to the wheel, there repeating the brutal treatment by holding his head under the spokes of the wheel running the same around on his head, endangering his life. The man was terribly disfigured, and was about jumping, overboard, only for the 2nd Officer, Chas. Pierce (no relation of the Master) who caught him and led him to the fore-castle.

After this nearly every one of the crew encountered brutal treatment from the Captain. In one instance Capt. P. struck me, for not being able to overpower the elements and take a boat's warp forward the fore rigging. He struck me a heavy blow from behind on the head which nearly took my senses away. At another time he accused me of using too much wood, water, and cooking too much food for the men (I shipped as cook and remained as such till present date.) Capt. P. called me to the fore-hold and hauled me down by the hair of my head and struck my head on the shifting board with such force that I have felt the effects ever since. He has also made threats that he would take an axe, hand-spike or anything he could lay hold of, and knock our brains out and did not care a d—n if he killed us. To make a long story short all the crew were afraid he would kill us, or disfigure, or cripple us for life; he also kept us out eleven months without liberty, or sufficient fresh food to keep us from the scurvy. All hands had the scurvy so bad that he was obliged to put into Rodrigues and bury some of the men in order to save their lives; while at this island he beat and disfigured our cooper, a German, aged fifty-four, for no cause whatever."

For a cook that was not badly drafted. This, your Honors, was the first part of that statement. That was clearly libellous. There were allegations of assaults; there were some specific instances mentioned; and the statement made out that Capt. Peirce was an object of terror for all on board, and that, from his violence, every one went in danger of their lives. Nothing, hardly, could be more serious than that. But that was not all; for, as the letter went on, the charges against his client became of a deeper and deeper dye.

The learned gentleman then read another part of the letter viz:—

"During the month of October 1871 he called into Dennis Island for wood. Dropping the star-board anchor in about three fathom of water. About five o'clock p.m. the ship's struck aft upon a rock, he hove up much of his cable and about 7 p.m. she struck again and tore a piece of her shoeing off the heel. At 11 p.m. she struck heavily again, when a cage anchor was taken ahead about a hundred yards and she was hauled ahead and lay with starboard and cage anchors down, and sailed next morning at daylight. Now Capt. P. put into Mauritius reported as coming in distress leaking badly, (the vessel never leaked during the whole voyage, not even after striking)"

That distinctly charged his client with making a false report as to the state of his ship. He would presently show, that when the vessel came into port, a survey was called for and that, in consequence of that survey, expenses were incurred; and yet in the face of that there was no scruple to charge his client with making a false report with the view of deceiving the Insurance Companies.

Here the learned counsel continues reading:—

"He put her upon the Dry Dock, took her

copper off also her sheathing, tried to have her condemned, and from what I can make out could not succeed for she is but little damaged and can be made seaworthy at small expense."

All those allegations against the honesty of the Captain would be contradicted by men known in this community as men of honour—Capt. Wales, and Captain Barclay. They were the surveyors, and they would tell the Court, that, after their survey, they recommended certain repairs. That, he thought, would answer that part of the statement.

The learned gentleman again read:—

"Captain P. did not go to his American Consul for advice."

He called their attention to that phrase because it would point out the reason why the letter and all its allegations had been published. If the men had received ill treatment, let them complain of it by all means; but what had this to do with their ill-treatment, whether the Captain sought or did not seek the advice of the Consul? What had they to do with that? He believed, he should be able to show, that that phrase would lead them to the real reason for the publication of the letter.

Mr. Pellereau continued reading:—

"He has stripped and dismantled her and is now laying in shallow water with her bottom perfectly bare. He has shipped all his Oil—5 hundred barrels—on the Whaling Barque *Pioneer*, James Hassard master, to be taken to the Cape of Good Hope. He has tried to drive us all from the ship one by one without a settlement; he says, there is nothing coming to us from the Oil taken, and at last put us all on the beach, in this foreign port without our three months' pay which we are entitled to on being discharged here and the voyage ended."

He should show that that was false by the articles of agreement between the Captain and his men, which said that the oil was to be shipped to the port of departure, New Bedford, from which the ship set sail. And the three months wages were not due unless the Captain voluntarily closed the voyage, and that he had not done.

Mr. Pellereau again read:—

"He has been heard to remark that he did not care a d—n for the American Consul, that he should do as he pleased with his ship."

Again, the American Consul. What has he to do with the matter? They would be able to understand that phrase, when they heard it proved that the letter, containing those allegations, was taken by the American Consul to the Editor of the *Commercial Gazette* for publication.

Mr. Pellereau again read from the letter:—

"He has also been heard to say that he was tired of whaling and wanted to make a trader of his vessel, and at another time, that he calculated to make a good thing by condemning her."

"It is clear in the minds of many, that Capt. P. intends to sell his ship, ship his oil somewhere, sell the same and clear out, and thus deceive his Officers and Crew, Insurance Company, and his own brother-in law J. W. P. who is Agent in New Bedford."

There, their Honors had a statement, which commenced with charges of assault; which went on to assert the publication of false reports with intent to deceive the Insurance Companies; and which concluded with a most sweeping charge against the character of his client. But now it would seem that of all the charges none was so grave nor so atrocious as that of his client having neglected the advice of the American Consul.

Mr. Pellereau then began to read a phrase of the letter beginning with the words: "Now in the end the American Consul."

The Chief Judge. — The American Consul's name was not on the record.

Mr. Pellereau. — It was true the name of the Consul was not on the record. He was sure his Honor knew he always kept within the limits of the license afforded to counsel. He should act with discretion, and he should make no



charges which he could not substantiate. But, it was his duty to show that malice existed in fact, as well as in law, and he thought he would be able to show that the Defendants were so mixed up with the Consul (between whom and his client there was great hostility,) that they had acted with a view of serving the Consul, and of damaging his client. He did not call the Consul as a witness, beyond the purpose of producing certain documents; but the other side had given in his name as a witness who would be able to prove the alleged facts. If, then, that was the course of the other side, how, could he in the pursuance of his duty, avoid speaking of Colonel Pike?

*The Chief Judge.*—He was not a party to the action.

*Mr. Pellereau* could not see how he could avoid his name or refrain from speaking of him.

*The Chief Judge* was not finding fault at the course pursued.

*Mr. Pellereau* submitted, that his Honor had made a remark which necessitated the foregoing observations. It was always far from his mind to inculcate anybody when he could avoid doing so.

The learned gentleman then read another part of the letter to the following effect:—

“Now in the end the American Consul has taken us in hand and is doing all in his power to protect us against these unjustifiable actions on the part of Captain Peirce, and going to send us home with proper papers in our possession to enable us to recover our rights, after 28 months hard and dangerous labour, and a deal of abuse. Can it be possible that the Stars and Stripes should be disgraced by such masters of whale ships as Captain P.? Yes. And it is possible that these captains can with impunity stand up and disdain our Consuls and say they do not care a d—n for them, and threaten to break their door down because the Consul is engaged and requests them to call at another time?”

Now, that was of some importance, for it referred to a circumstance which occurred on the 6th Dec. 1871. Captain Peirce was charged before the District Magistrate for having attempted to break down the Consul's door. The trial went on, and Captain Peirce and Mr Robinson were fined.

*Mr Newton.*—Mr Robinson and Captain Peirce were charged, but only Captain Pierce was fined.

*Mr Pellereau* accepted the correction.

*The Chief Judge.*—How much?

*Mr Pellereau.*—There was a very small fine.

*Mr Newton.*—It was £10.

*Mr Pellereau.*—It was at most £10 (a laugh). That would be an important circumstance, because it would enable them to fix a certain date. That event was on the 6th Dec., and though, the event was disputed by his client, the passage pointed to a clear date, and that was important because some of the sailors whose names were mentioned as being affixed to the letter, had left Mauritius before that date; so that the names must have been forged or put there without the consent of their owners.

*Mr Pellereau* then read the rest of the letter:—

“Can this be overlooked by the American Government? I should say no. It is not known to the Government or, I am sure these crimes would be punished to the full extent of the Marine laws of the United States of America. We glory in Col. Pike's promptness in resenting the foregoing insults and thank him most sincerely for his services in this case. He will most assuredly be heard from fully upon this case of Capt. J. C. Pierce, James Hazard and those who have aided them in this port.”

What had James Hazard to do with the treatment the sailors experienced on board their ship? Captain Hazard was the Master of another ship, the *Pioneer*, and had nothing whatever to do with the *Amie Ann*. Why Capt. Hazard's name was brought into that letter he knew not, but perhaps their Honors, would be able to discover, when they learnt that James Hazard was in open hostility with the Consul. Whether that

was the reason why Hazard's name had been put in would be shown presently.

*The Chief Judge.*—Read that about Hazard again.

*Mr. Pellereau* again read the phrase beginning with “We glory in Col. Pike's promptness,” &c. Now they were not seamen of Captain Hazard. Why was his name there? He could only account for it by the fact that he was in open hostility with Colonel Pike, and had experienced the same difficulties as had Captain Peirce. The letter ended as follows:—

“Col. Pike is kindly going to send us home at as early a season possible.

“HENRY WILLIAM,

“Cook, barque *Amie Ann*.”

To that letter was appended the following certificate:—

“We, the undersigned, certify to the within as being correct, and that much more might be correctly added to show the brutality of this unprincipled man.

“W. H. Macomber, 1st Officer; Chas. C. Pierce, 2nd Officer; G. D. Smith, 3rd Officer; Edmund F. Weeks, Steward; Levi H. Butto, Boatsteerer; George Sprague, do.; Levi Waker; John Laurence; Dennis Shay; Henry G. Herron; José Frank; Antone Rodorque; Emmanuel Francis Costor; Emmanuel Gomez; Joe. Peckoe; Alfred Scott; A. Kern; Joe King; Frank Drey; Philip G. Lord; Théodore Froberg.”

Now many of the names that were put there were those of persons who had left the country before the 12th December 1871.

It might be said that tho' that letter was dated 12th December; it was written before and simply dated on that day. But there was a fact which gave it a certain date, that fact to which he had called their attention the breaking or attempting to break open the Consul's door. That proved the letter at least must have been written on the 6th December, at which date they would be able to prove that several of the men whose signatures were attached to the letter, had left the country. That would prove how determined was the attempt to ruin the reputation of his client. He had brought the action against Mr and Mrs Channell as the proprietor and publisher of the paper. Of course they would have preferred to sue the actual writer instead of the mere publishers of the libel; but at the time they commenced the action, they did not know who was the writer, and when his client went to the office of Mr Channell and enquired about the parties who had written it, information was denied him and he had been compelled to take the present course. To him it appeared that the defendants had accepted the letter, and without taking the proper steps for obtaining information had had the rashness to publish the serious statement against his client which they had heard. That was a rash act; an imprudent act; an act that was not honest. It was not honest on the part of the journalist who attacked a person who held no public position or responsibility and who had done nothing wrong in the public. It was not honest to publish a letter like that without ascertaining all the facts, and learning whether it was really written by the parties whose signatures it professed to bear. The defendants had published a libellous letter with forged signatures, and that was a rash and imprudent act. That perhaps might have been overlooked. But the defendants were not content with that, but they passed remarks on the letter in the very sense of the letter itself. He would read the article which commenced “The letter we publish below was originally destined for and has been sent to more than one influential newspaper in the United States.” How was it that the letter headed “Port Louis, Mauritius, Indian Ocean” and addressed to “The Editor of the *Commercial Gazette*” had been sent to several influential newspapers in the United States for



publication was it by the cook himself? or by the sailors who had signed the letter? They did not know. Perhaps it might appear that all this had been done by the official man who had taken upon himself to protect the interests of the seamen not merely by means of official power, but by the publication of such statement as that which they had heard that day. Perhaps it might be that a person of that kind was at the bottom of the whole case. Really your Honour, the object was to make it known to the whole world that Captain Peirce was an inhuman Captain, that he brutally illused his crew, and that he had attempted to deceive the Insurance Companies. "The author in forwarding it to us requested us to publish it." He believed the Defendants would not be able to prove, nor show that the letter was destined for publication here, it was in America that it was destined to see the light. He firmly believed that the majority of those who signed it never dreamt of seeing it appear in a newspaper, and he as much believed that the publication was due to somebody else than its authors,—somebody, whose name in the course of the trial could not help coming out of somebody's lips. Mr Pellereau read:

"Although its correctness is vouched for by the officers and crew of the vessel commanded by Captain Peirce we have waited until we could make inquiries of the United States Consul Colonel Pike, and after hearing what that gentleman had to say we have decided to print the letter. Colonel Pike did not hesitate to inform us that, from all that had come to his notice, he considered the conduct of Captain Peirce as inhuman during the whole voyage."

It would be shown in evidence that that letter was written in Col. Pike's office and that as the crew came in, the letter was read to them by Col. Pike and the pen handed to them for the purpose of affixing their signatures. Here they found the name of the American Consul.

Mr Pellereau read again:

"Several of the men had been in the hospital with scurvy and they had received ill-treatment and but scanty provisions."

It would be proved that there were no cases of scurvy—at least none were brought to the notice of the Captain. Mr Macomber would say there were cases of scurvy, but when he was asked why he had not recorded the fact in the log-book, he said an American log-book was not meant to record scurvy. Their honors would, if they examined the log-book, find no mention of this disease. A disease so serious as scurvy, if it broke out, should certainly be mentioned. Their honors would find that if some of the officers were ill, mention was made of it. If some of the crew were invalided, a statement to that effect was made. Therefore if an American log book was not meant to record scurvy why was there any mention of other diseases. He should call Mr Jenner, Magistrate of Rodrigues to disprove the allegation in the letter signed "Henry William" that some of the men were so bad with scurvy that they had to be buried in the beach of that port. The usual way of curing scurvy, it is said, was to bury men in sand up to the waist or higher and keep them there till they could no longer bear the pain; and the pain was considered to be a sign that the scurvy was eradicated or checked. Mr Jenner would come forward and state that never were men of this ship buried on the beach, and that if they had been, he must have known of it, as the port of Rodrigues is so small. And yet the Editor of a newspaper accepts such a statement as that without making enquiries of persons who were in a position to tell him the truth, and without even consulting Captain Peirce for an explanation.

Mr Pellereau then read: "Capt. Peirce had been condemned by the local Magistrate several times for assault and smuggling." That was incorrect. Captain Peirce had not been convicted many times. He had been convicted once for assault and once for breaking open the door of the Consul, but never for smuggling.

Mr Pellereau then read the continuation of the article:

"...and in his endeavours to protect the men

from his cruelty, Colonel Pike found it very difficult to act where there appears to be no recognised jurisdiction either in the Courts or in himself as Consul. In the interest of humanity and justice, the Consul should have more authority in such cases, and we trust his government in presence of this example will see the necessity of placing their subjects under the protection of some Court, for we like to suppose that there is as much regard for human life in the United States as in England, and in the latter country such acts of cruelty are punished most severely. It was about two years ago that a Captain was condemned and hung at Liverpool for having caused the death of a man by ill-treatment."

That was all the publication they considered libellous, and that was contained in that number of the 31st January 1872, and as he had said at the outset, the charges were of so atrocious a character, that they would for ever damage the character of his client, if they were believed. It was quite true the Gazette had opened its columns to Capt. Peirce, but that was after the perpetration of the mischief, and now it was necessary to have a contradiction in the verdict of a Court of Justice. He believed he had shown that the Captain was charged with cruelty, inhumanity, brutality, and fraud; and the charges were considered so serious that they brought into comparison with the conduct of Captain Peirce, that of a Captain being at Liverpool not long back. Could anything be more serious than that?

The Chief Judge thought that was brought on in the way of contrast and not of comparison.

Mr. Pellereau thought the language of the article bore out the construction he had put upon it. It was certainly a most scandalous libel. There were American Merchants here who could not help being prejudiced against Capt. Peirce by such a publication. There was Mr Robinson. There were Houdlette & Perkins of which house Mr Robinson was a member. They might want a captain to-morrow. How could they take his client in the face of such charges? how could they entrust to his care a cargo and the lives of a crew with such charges hanging over his head? Mr Robinson would go into the box, and he would tell their Honors the bad effect this publication had had on the character of Captain Peirce. Surely for such things as that, there must be retribution, but he must assure the Court, it was not for the sake of making a substantial bargain out of this scandalous libel, that the action had been brought. The chief aim was to rehabilitate Captain Peirce's character to the world. He, of course, was in every sense a partizan for the liberty of the press, and if he was in power, no one would do more to favour its free action. But there must be justice before all. Here was a man who had never been in an official position, who had never been much known, who comes to Mauritius to conduct the business of the ship committed to his care, and who, because he is in hostility with his Consul, finds that attempts are made to ruin him all over the world. Does not such a state of things require to be requited with something more than mere vindication of character? Surely so, and it must be a severe punishment, so as to deter others from the committal of such rash acts. Would it not have been the right course if the writer in the newspaper had sent for captain Peirce and had asked him for his version? Ought not a knowledge of current facts to have induced him to hesitate before adopting the responsibility, when he knew that the signatures were those of men who had had a law suit here with their captain? Ought he not to have been on his guard, when such a statement came through a hostile channel to the party whom it concerned? But he was not. He was content to take the opinion of Col. Pike. He never asked captain Peirce if he could give an explanation of the statements, and when his client went to the office of the Gazette to inquire who was the author of the statement, he was denied the requisite information. And the offence of the defendants did not stop there; for what they stated on the 31st January, they in every respect confirmed in a newspaper published



a few days afterwards—the *Commercial Gazette* of the 5th February 1872. The paragraph that then appeared was written under the responsibility of the Editor of the *Commercial Gazette* and what it said was that :—

"On the 31st ultimo we published a letter signed H. Williams complaining of the ill-treatment he and others of the crew had received from Captain Peirce of the barque *Annie Ann*. The letter had annexed to it a declaration of the officers and crew vouching for the accuracy of the facts stated. After the letter appeared four of the seamen sent us declarations stating that they never signed the letter although their names were attached to it. We lost no time in giving them whatever advantage they and their advisers might hope to derive from the publicity of the fact. Since then we have made inquiries at the office of the American Consul and we have been allowed to see declarations of three of these people made on oath before the Consul and bearing their signature or their mark. We may even say that the declarations are stronger than the letter against Capt. Peirce, and if it could be proved that their signatures to the letter had been forged the circumstance of their having signed a declaration equally strong if not stronger, makes no alteration in the facts as originally stated."

That is his own admission. Some of the names that appeared as signatories to the letter ought not to have appeared; but from enquiries he had made, that did not affect the merits of the case. Inquiries of whom? Of both sides? Of Col. Pike yes; but never of Capt. Peirce. That then was a confirmation of what had been already published. Here was a persistence on the part of the defendants in their most objectionable opinions, and the statement instead of being contradicted was entirely maintained. Under those circumstances they had thought it but mere duty to bring this action, and he must say distinctly that he should move the Court to pass a severe verdict. The learned counsel then went over the points in the article on which the action was technically based.

*The Chief Judge* supposed they were set forth minutely in the declaration.

*Mr Pellereau*: Yes.

*The Chief Judge*: Need they then be read?

*M. Pellereau* thought it was necessary that they should be read, the article said that Captain Peirce had been condemned several times for assaults and for smuggling. Well, they admitted one case of assault but denied most emphatically the charges of smuggling.

*The Chief Judge*. What was there for a whaler to smuggle?

*Mr Newton*: They would hear of conviction by the Collector of Customs who had magisterial power.

*Mr. Pellereau* continued his resumé of the facts coming down to the statement that men were buried to save their lives.

*The Chief Judge*: How could they save men's lives by burial?

*Mr Pellereau*: They only buried them to the waist.

*The Chief Judge*: It was an earth bath?

*Mr Pellereau*: It was a sand bath. He thought he had already explained that the practice of curing scurvy was to bury men to their waists or higher, till they could no longer bear the pain, and that the pain showed the scurvy was eradicated or checked. It was said that this was done in the port of Rodrigues, but Mr Jenner, the Magistrate, who was constantly at the place would tell them that no such fact occurred.

*The Chief Judge*: The word 'bury' was too strong.

*Mr Pellereau* gave them credit for meaning that they only meant that the men were buried to the waist.

*Mr. Newton*.—It was cook's style.

*Mr. Pellereau*.—Really the cook wrote very well. The learned counsel continued his resumé and said that in the face of that mass of evidence, he did not think it would be difficult to prove malice in fact as well as malice in law. The fact

was the letter was published without sufficient enquiries having been made, and with a forgetfulness of the bounden duties and responsibilities of an Editor of a Newspaper. He did not ask their Honors to do aught against the freedom of the press, but he did ask them by their verdict to set an example to that section of the community who had a propensity to make remarks, to assume the responsibility of facts, and to put them forward as the truth, without having taken the trouble to ascertain whether they were or were not the truth. Now Mr Channell was not a young journalist. He had been a long time at the work and he ought to have become very prudent and very cautious.

*The Chief Judge*: Has that much to do with the case. His duties would be, would they not, the same the first day as the last.

*Mr Pellereau*: In law they might be; but there was this difference. A little leniency might be shown to a new comer, but to an old journalist like Mr Channell no leniency could be shown. It might be argued that as there were American Merchants here, they might wish to know the character of American captains and that the matter was of public interest; but that was no justification for going into the details of private trade with the deliberate intention of ruining a man. The whole course of the proceedings was most dishonest, for it would be proved that when the document was taken to Mr. Channell for publication, he sought information from only one man; that he did not, in publishing the matter, have any intention of being fair, but of siding with one party and attempting to gain success for that party. He should most certainly move their Honors to be severe, for he thought in the face of the evidence, documentary and oral, that he should lay before them that £5,000 was not a penny too much to demand for the damage committed. He should insist upon the sum, because Mr Channell had already been punished for similar offences. Their Honors would find on the records of the Court a penalty against Mr Channell of £100.

*Mr Newton*: £80.

*Mr Pellereau*: Well, £80 or £100.

*The Chief Judge*: This was not a criminal case, and he did not think previous convictions could be cited.

*Mr Pellereau* after that would not press the point, but he did think under all the circumstances damages of such a nature must be awarded, as would not only punish the defendants but convince others that their example could not be followed with impunity.

*The Chief Judge*: What were the pleas for the defence?

*Mr Pellereau*: Simple justification and justification of such a form as to amount to aggravation. They commenced with an attempt to impede the plaintiff from obtaining justice, and the rest of the pleas were in every way a justification.

After quoting the pleas (which will better appear later on) Mr Pellereau concluded by again reiterating that he believed he should be able to prove malice in fact as well as malice in law. He believed his learned friend had wished to put a few questions to Captain Peirce, but he thought on the whole it would be better if the examination of witnesses stood over till Tuesday.

*The Chief Judge* thought they had arrived at an hour when it would be convenient to adjourn.

The case would be adjourned till Tuesday to be reached as soon as was possible.

The Court then rose.



SUPREME COURT.

Tuesday 4th June 1872.

Before His Honor Sir C. F. Shand Kt. and the Honorable N. G. Bestel.

PEIRCE v. CHANNELL AND WIFE.

We commence to-day the publication of the evidence given in this case :

1st witness for the plaintiff, Pierre Raffau examined by Mr Pellereau counsel for the plaintiff : I am a trader at Rodrigues. I am leaving this port about noon to-day. I was at Rodrigues when the bark 'Amie Anne' was there. It was either on April or May last. I have a shop there, it is near the beach. Ships calling at Rodrigues anchor about a mile from the beach. When the sailors come on shore they land quite close to my shop. I often saw the sailors of the 'Amie Ann' in my shop. I always saw about twelve on shore, none of those I saw were sick. They had not the scurvy or any skin disease. They appeared healthy. I cannot say how long the ship was there, she was there about fourteen days. I saw none of them put into the sand. The town of Rodrigues is called Port Mathurin. If any sailor had been buried up to the waist in the sand I would have seen it, as Port Mathurin is an insignificant little village. I have seen such a thing done at Rodrigues for the scurvy. I am just in front of the landing place, and if any one had been carried from there to any part of the beach to be covered with sand, I would have seen it. They might have landed on other parts of the coast, but this has been forbidden by the Police on account of smuggling. I must have seen any one land at the wharf, I speak of daylight. The sailors of the *Amie Ann* often landed for water and provisions and after called at my shop often. I never heard them complain, I never heard them speak of the Captain. The Captain came on shore in his boat and the men, in another boat, they never complained of their ill-treatment. I understand English a little and could have understood them if they had complained. Being asked by the counsel in English whether he ever heard the men say that they were dissatisfied with their ship? The witness answers in french that he did not. The Magistrate at Rodrigues was Mr George Jenner the Police Magistrate at that time.

Cross-examined by Mr Newton.—In English I sometimes had a conversation with those men. We had some conversation about the object of their whaling voyage and they told me that they had not been successful. I spoke with some of the crew. I do not speak english very well, so I could not have lengthy conversations with them, but it is usual on the arrival of strangers to make enquiries about the object of their voyage, this is the only subject of our conversations. Some passing observations were made respecting their voyage and the men then talked among themselves. Besides asking about their voyage, I asked if they had curiosities for sale from the different colonies where they had called, with the exception of those two subjects of conversation I left the men to their own business and I went after my own. When there are whalers in the roadstead I am always on my door-step looking towards the shore. I mean from eight to four. My house faces the shore and I am obliged to keep my eyes on the shore. I don't mean to say that even during breakfast I keep my eyes on the shore. It sometimes happens that I don't keep my eyes on the shore. Whilst helping my customers I always see what is taking place on the shore. A man might land without my seeing him but three fourths of the time I could see what takes place. There is beach enough all round Rodrigues to bury a man up to the waist. A man with scurvy generally is lame, because it generally attacks the legs. I never saw scurvy on the hands. I have never seen survy on the face on the upper part of the body, but I have seen sailors with scurvy attacked on the legs. I never actually saw the disease, but whenever I saw a man landed who I was told suffered from scurvy, I always saw him lame or carried from the beach. I saw Mr Jenner every day whilst he was at Rodrigues particularly in the morning from 6 to 7 and from

2 to 3 till sunset; during the rest of the day he was in his office. His office was about 50 metres from the shore, he was about 50 metres distant from my place.

Re-examined by Mr Pellereau : Port Mathurin is a very lonely place, there is not much to occupy the attention. Such a circumstance as the burying of men to the waist on the beach on account of the scurvy, would necessarily attract attention. I understood the sailors to say that their voyage had been unsuccessful because they had not had many whales, and that there would be no profit.

John Cleveland Peirce, the plaintiff in this case sworn and examined by Mr Pellereau :—I was the Captain of the American Bark "Amie Ann." On the 24th of June 1869 I left America with my wife and one child. There were 26 people in all on board the "Amie Ann." I cleared from New Bedford. The owners of the bark are John Westley Peirce my brother-in-law and myself in the proportion of 7/8ths for myself and 1/8th for him. The bark was insured. She was insured for the whole voyage, but not to exceed 48 months. John Westley Peirce the agent had the bark insured. I do not know whether the Company that insured the ship has any agent in this colony. The outfits and cargo were also insured a few days after the ship. The outfits were insured \$16,000 and the ship \$12,000. I had for three years provisions on board, for 30 months or three years when I left New Bedford. I had salt provisions, fresh provisions, meat, beef, pork, fish, bread and small stores. I have got a list of the provisions I had. Some of the provisions consumed on board were borne on the Log book and some are not, because the mate neglected to do it. I have only a list of part of the provisions which I had on board when I left. The list is at Houdlett & Co.'s office in this town. Houdlett & Co. are the agents of the ship in Mauritius. That list was deposited by me at their office. The list is in a memorandum book. A copy has been made of that book. All the provisions are not in the memorandum book. After I left New Bedford I called at Floris Island in the Atlantic Ocean. I called there about 4 months after I left New Bedford. I stayed one day only at Floris. I procured some provisions there at Floris Island, potatoes, apples, onions, eggs, figs. I procured I think some chickens there. (Witness is shewn Book headed Disbursement Account of Bark *Amie Ann* at Floris.) I swear that the provisions marked in that book were procured at Floris Island. I wrote it out the next day I left Floris. I had a small memorandum book in my pocket when I went on shore and entered in that memorandum book all my purchases. There was a seaman named Davis Shay on board. I swear I never beat him. I never struck him on board. There was a boat sent on shore with Shay in it at Floris Island. The officer in charge of the boat was William H. Macomber who was then second mate on board. I did not go with the boat. When the boat returned on shore the second mate reported that he gave Davis Shay a pounding because he wanted to run away. Shay could hear what Macomber said on board. As they were coming on board I heard Shay who was forward, hollow out. I ran and saw Macomber giving him a pounding on the port side by the fore rigging. I took Shay by the collar, and told Macomber to leave him alone, and asked him what was the matter? Macomber replied that he had attempted to run away on shore. I collared Shay simply to rescue him from Macomber and I sent him to the wheel I did not run the wheel round his head which is a new kind of punishment I never heard before. As he was in liquor, I did not send him to the fore-castle. Some of the other men were also in liquor and I was afraid of a fight. Shay did not attempt to jump over board. Denis Shay remained on board till October 1871 until my last arrival here. Shay did not lodge any complaint against me at any of the places where we called. Between Floris Island and my last arrival here, we called at Seychelles where there was an American Consul, at Rodrigues and at Mauritius in May 1871. Mr Attwater is the American Consul at Seychelles. After leaving Floris Island,



we called 10 days afterwards at Fayol Island where there was an American Consul, Mr Dagner. In either of these places Shay did not lodge any complaint nor ask the authorities to bring any complaint against me. No one on board preferred any complaint or asked for leave to go on shore to prefer any complaint against me. At Mahé, Seychelles, they had full liberty to go on shore and they did go on shore. At Seychelles, two or three times, the boat went on shore every day for wood, water and provisions. Each watch in turn had 48 hours liberty. At Rodrigues, Mr Jenner, the Police Magistrate, came on board twice. Some of the men went on shore every day. Shay went on shore a dozen times at least at Rodrigues. In May 1871 when I first came here, Colonel Pike, the American Consul, came on board at the Bell Buoy. In October 1871 also, when I last arrived here. And in none of those places where there were either local or American authorities or both, neither Shay nor William, nor any men of the crew preferred any complaint or asked for leave to prefer any complaint against me. After I left Floris Island on the 1st November 1869, I called at Fayol; I procured some provisions there. I have not looked at the book of provisions for 5 or 6 months. I never opened the book for the last 5 or 6 months. I may have opened it during that period, but I did not take any note of disbursements. (Witness is shown a book and says): I find an entry but I do not find any entry of provisions taken at Fayol. I called next at Tristan Dacuna in the South Atlantic where I landed. I bought some provisions there and took and used them on board. I was there in February 1870. I stayed nearly a fortnight there. Plenty of fish were caught there which the crew could eat and did eat. Before calling at Tristan Dacuna I had called but did not land at Trinidad, and there caught fish which the crew ate. After I left Tristan Dacuna, I called at Seychelles on the 1st of June 1870. I stayed 14 or 15 days at Mahé, and got wood and water and gave liberty to the men to go on shore, which liberty they used. I got very little provisions there. I swear the list shewn me is the correct list of the provisions I bought there. When I left Seychelles I went to Bird Island, one of the Seychelles group, and I there procured birds, eggs and a couple of bushels of corn. I stayed there a week and then returned to Mahé to get five men who had deserted, Denis Shay and Henry William being two of them. They were all brought back on board. I said five, I think there were only four. After Seychelles I went to Johanna, North of Mozambique Channel, I got there ten days after leaving Mahé. I got provisions there (a list is shewn) I swear to the correctness of the list shewn me. From Johanna I then came back to Denis Island, after remaining about 10 days at Johanna. I got some pigs at Denis Island and some cocoa nuts. The mate and some of the crew went on shore shooting wild hens which were consumed on board. I went afterwards to Coëtivi which I reached in September 1870, and I got a hog and some ducks, for which I gave some tobacco in return. The hog was a present to one of the crew on board, John Scott, it was consumed. After leaving Coëtivi I called at no place until I got to Rodrigues which I reached in April 1871. Up to the time I reached Rodrigues there was no scurvy on board. I swear to it. I know well what scurvy is. Joe Calveda had rhuematism in his knees, and he was the only man off duty when I reached Rodrigues, he was on deck. A man named Emmanuel Marshall a portuguese had a cut at his foot, which he got by accident from Macomber. No one had scurvy on board. I had a log-book kept on board by the first officer William H. Macomber who was then acting chief mate and became actually chief mate. He began keeping the log book at Fayol Western Islands in November 1869. If there had been a case of scurvy on board it would have been borne on the log-book. There was no entry made of scurvy on the log-book. (Log-book is shewn which witness identifies). No man com-

plained to me that he had the scurvy. I have been at sea since 1846 most of the time, and Master of a ship since 1854 most of the time. Fresh provisions and vegetables on board were sufficient to prevent scurvy. I part of the time gave lime juice to the crew. During the interval from Coëtivi to Rodrigues I had enough fresh provisions to keep off the scurvy. For two months however I had no vegetables, except what I got from the vessels Iphigenie and Borneo which I met, but during those two months I had vinegar which I gave freely to the men, lime juice, bread, fresh meat that is preserved meat in tins, some live hogs which were all consumed but one. I swear that no scurvy broke out during those two months. Those two months were those that immediately preceded my arrival at Rodrigues. I could not call at Mauritius, on account of the hurricane season. Henry William was one of the crew. I never struck him on the voyage, but I took him two or three times by the collar and shook him. Once at the South of Madagascar I shook him because he did not haul on the boat's rope and left the boat drift astern. If by chance the boat had come under the ship's quarter when she was rocking and settling down, the men in the boat might have been crushed. Another time in the North Atlantic Ocean I shook him because he did not have his breakfast ready in time. He was cook on board and the meals hours were 7, 12 and 5. I took him by the collar and used some hard words towards him. I might have sworn at him on other occasions and used hard words. Henry William never appeared to feel much from my shaking he was bigger than I. Upon my oath I never pulled his hair nor gave him a blow, I never threatened to knock my men's brains out on board but I have threatened to knock the men down, I never carried out the threat. I never said that I would knock them down with an axe or handspike and other weapons. I do not think when I said I would knock them down I had anything in my hands.

By consent the examination of Plaintiff is suspended in order to enable the Defendants to examine the following witness who is leaving to-morrow.

Charles Henry Sylvester, sworn examined by Mr Newton counsel for Defendants:—

I am first officer on board the *Pioneer*. I know a man of the name of Philip Lord; he is a sailor; he was formerly of the "*Amie Ann*" I recollect a letter appearing in the *Commercial Gazette* respecting the ship *Amie Ann*. (The newspaper is shewn to witness who says:) Upon the letter contained in the *Commercial Gazette* 31st of January, the name of Philip Lord is affixed, it is the name of the same man I know, I remember Lord made statements respecting this letter, it was on the 31st of January. He borrowed the paper containing the letter and brought it on board, and handed it over to the steward on board the *Pioneer* who was formerly on board the *Amie Ann*. He read the letter aloud in presence of Philip John Lord, the same Lord above alluded to, and William Winn Custom House officer. After he had read the letter Lord said: See that is good, it is not half so much as it ought to be, and he spoke about a man that was sent aloft and kept for hours there and said that this ought to have been put in also. He said to the steward: See if my name is there? The steward said: It is not. Then Lord looked at the paper himself and said that his name was there, pointing out the name of Lord, the reason why the steward did not know that Lord's name was at the bottom of the letter, was because Lord was known to him under the name of Muggins, that was the nick name that I believe he went by on board the "*Amie Ann*." I have left the "*Pioneer*" and I am going away to-morrow morning. It is to my knowledge that there was something sold by Capt. Peirce to the Captain of the "*Pioneer*." The Captain Peirce of the "*Amie Ann*" sold to Captain Hazard of the "*Pioneer*" some provisions and one boat. Those provisions came from the warehouse, they belonged to the "*Amie Ann*." It was Captain Peirce who took the men of the "*Pioneer*" to bring the provisions, and they took the boat also. I know



that Captain Peirce went on board the 'Amie Ann' he took the boat, sails and rudder to the warehouse and then had them transferred to the Captain of the 'Pioneer.' This sale took place some time in December, I am not sure but I think it was last year. The crew of the 'Amie Ann' felt bitter against the Captain, I have heard them so talk. I have heard the Mate and other officers so talk. Personally I know nothing about it.

Cross-examined by Mr Pellereau:—Mr Winn and myself and Lord were present when the letter was read by the steward on board the 'Pioneer' to Lord. Lord did not ask the steward to read out the letter and his name, he merely handed over the letter to the steward. This took place in the aft part of the ship on the taffarel, the steward was sitting on the rail. I stood at a short distance from them whilst the steward was sitting on the rail and the other three were standing round. I have left the 'Pioneer' because I have been driven out by Captain Hazard, her master. I went in the Pioneer's boat to the "Amie Ann," and took the "Amie Ann's" boat, rudder, sails and oars to the Custom House Dock where I got a permit to tranship the boat. I think Lord was with me in the boat and two Portuguese who are no more in the colony, there was no other officer but myself. Capt. Peirce was not with me. I met capt. Hazard at the Custom House, who got the permit. The following provisions were sold by capt. Peirce to capt. Hazard: 4 casks of salt beef, containing 20 barrels, one cask of syrup, one of molasses and one of bread, I last arrived in Mauritius in November. I know some men of the crew of the "Amie Ann" who have left, but not by their names.

*By the Court:* Captain Hazard had sold two of the 'Pioneer's' boats, and bought one of the "Amie Ann's" boats.

Captain Peirce's examination continued:—I remained at Rodrigues about 15 days. I did not send any man to be put in the sand there. I have heard of such a remedy for scurvy, but I never saw it applied nor tried it myself. I had a German cooper on board his name is Shulks. I did not beat him, I pushed him, I had ordered him to packet some casks to give water, he said he was not able to do it. I told him to go and do it, he said that he was a better man than I was and that he would not go. I took him by the shoulders and pushed him out of the way over the chain, he fell over the chain. I did not do anything else to him. He was not disfigured by the fall at all. He said to the officer that he would not work any more on board. The second mate Charles Peirce told that to me. Charles Peirce was repairing his boat on deck and asked the cooper to help to turn her over, he refused to do so, and said that he would not do any more work on board. This took place the day previous to my collaring the cooper. I took some provisions at Rodrigues, namely, potatoes, pigs, and the articles mentioned in the Log-book. When I left Rodrigues I came to Mauritius and arrived here on the 14th or 15th of May. I got provisions here. I made a list of them. (A number of bills is shewn to the witness.) Those bills contain the provisions I have bought. I remained about a fortnight in Mauritius at that time. I had three deserters in Mauritius on that occasion, Isaac Miller, John P. Nash, carpenter, and the man we called Brick Top. I gave their names as deserters to the American Consul. There was a fourth, Antone Kern. I went to the Consul's office and reported them. I left having caught Antone Kern, but without the other three. Isaac Miller had a boil on one of his knees, he caught it South of Madagascar working in the oil, I treated him for it. I gave him flax seed for poultice. That was not scurvy. Any body on board might have seen that boil. Those boils leave marks specially when they come on the bones not in any fleshy part of the body. I saw the Consul, he came on board the ship to the Bell Buoy, he said nothing to me about the treatment of my men. He saw my men, they were on the deck at work; he had any opportunity of seeing them there. The crew were aware

that he was the American Consul. He was brought by six of my crew in one of my boats and returned in the same way. He dined with me and my wife at the hotel in the evening. Houdlette & Co. were then my Agents as they are now. When I left Mauritius I went to Sofala Bay in the Mozambique Channel. The object of my voyage was cruising for whales, I stopped at Uropi Island in the Mozambique Channel and we got 4 large turtles there, the largest I ever saw. It was about the 15th of June. I called at several places and then at Johanna. I got provisions at those places (a list is shewn). I took chickens at Sofala Bay and the rest of the provisions I procured at Johanna and Fernandelos Bay. About the 20th of July I left Johanna, cruised about in the African Islands and then called at Denis Island where I took provisions (a list is shewn) according to the list mentioned in the book and left on the 25th August. At Denis Island my ship struck on a reef in four fathoms of water. I had on board the acting Pilot, a man who was longest in the Island. I put the kedge anchor ahead and hauled the vessel out. I don't know how many times she struck, but she struck three or four times very heavily, there was a great deal of motion; the sea was rough. A piece of false keel was torn off and I picked it up floating alongside. She made very little water, if she made any. I never reported the vessel leaked. From Denis Island I got to Agalega, I had there one hog and some cocoanuts as a present, and about a bushel of split corn. From there I went to the Tromelin Island or Sand Island, and I afterwards came here on the 28th of October. I did not report that the ship leaked badly to the Consul or any one else. I went to the Consul and told him the accident I had met with at Dennis Island, and that it would be prudent to take the ship into the dock to have her examined. I advised my agents Houdlette & Co. who said that I better do so. I had her put in the Dock. I had her examined by Captain Wales, and Captain Barclay.

At this stage of the examination the case was postponed to the 5th June.

(To be continued.)



The case of Peirce v. Channell was then put off to Thursday next, Col. Pike, the American Consul, the witness for the defence now under examination, being engaged elsewhere.

SUPREME COURT.

Wednesday 5th June 1872.

Before His Honor Sir C. F. Shand Kt. and the Honorable N. G. Bestel.

CONTINUATION OF THE EVIDENCE IN THE CASE OF PEIRCE v. CHANNELL AND WIFE.

Examination of the second witness for the plaintiff Captain Peirce continued :

The "Amie Ann" was examined two or three times, Captain Wales and Captain Barclay made a written report which they gave to Houdlette & Co. The paper now shewn to me is the report.

Mr. Pellereau reads the report.

After this report was made I advertized for tenders, I mean the Agents did so, for the repairs of the vessel to the amount of \$9000. The advertizement is in the *Commercial Gazette* of the 14th November. Mr. Pellereau read this advertizement. *Witness continued*: I forget who drew it up. It was done with my consent and by my orders. When no tenders were made I wrote to New Bedford to my Agent John Westly Peirce to know what I should do. The copy of a letter now shewn me is the copy of the letter I wrote. I swear to the accuracy of this copy, I received an answer to that letter. The answer now shewn me is the letter.

Mr. Newton objects to this answer as it is not evidence of a witness under oath and he Mr. Newton can have no means of cross-examining the writer upon it.

The Chief Judge: The letter is not evidence of that class which is evidence on oath, but still it must be considered that it was admissible as part of the *res gestæ*.

*Witness continues*: The two letters shewn me are both answers to mine. The two letters are from my brother in law John Westly Peirce. The letters came by the Mail through the post and I received a telegram from my agents at New Bedford from Aden. This is the telegram I received which I produce, I received also a power of attorney, the signature at the bottom is that of John Westly Peirce.

Mr. Newton objects to the power of attorney as it is not authenticated by any consular authority.

*Witness is shewn another letter*. This is another letter dated the 28th March 1872 which I received from my brother-in-law and under his handwriting and signature which I swear to, I produce it, it came under the envelope produced. I did not write to the Insurers. Houdlette & Co. I believe wrote to the Insurers. After writing to

my agent I took the ship out of Dock and moored her in the harbour. I deposited the Register of my ship with the American Consul on my arrival, with my crew list and shipping articles. I have a receipt from Colonel Pike which I produce. Some of my crew were on board and some were on shore. I paid them with an order, all that was anything due to them. Most of my crew were discharged before the others sued me. Some of my crew went up to the American Consul and were discharged by mutual consent. After the ship was in Dock I had no control over the men, they came on board and left at pleasure, they came on board and had their victuals. They were to be paid according to the articles of agreement by shares in the oil. The bills of all the men forward were more than they had to receive. I mean by shares on the proceeds of the oil on its arrival in the United States. I had made advances to the men during the expedition. The advances in New Bedford before the ship sailed were from \$40 to 140 per each man. They had also received advances in tobacco, clothing, soap and money during the expedition according to the particulars mentioned in the book produced. The book shewn me is the book. These accounts are correct accounts of the advances to the men. I swear that the account John L. Gifford and up to the page ending with an entry for a doctor's bill of Henry John Herron is the correct account of all the money and articles advanced to the Officers and crew of the *Amie Ann*, up to our last arrival at this Port. Six of the men sued me before the Supreme Court three and three boatsteerers for their share of the oil which had then been put on board and along side the bark *Pioneer*. By agreement with Mr. Newton they agreed to take their orders. I gave them an agreement by which they were to get paid in New Bedford of their shares of the oil. The same thing was not done with regard to the other officers and crew of the American bark *Amie Ann*. With regard to the others I wrote to the American Consul to give their discharge by mutual consent to all those who wanted it. I do not know what the Consul did. I do not consider myself bound in a discharge by mutual consent to pay the three months extra wages. By our law when the engagement is off by mutual consent the Masters of ship are not bound to pay the three months' extra wages. I shipped the oil on board the *Pioneer* to be sent to the Cape and from the Cape to the United States. I had not sold the oil to any one. The oil was to be consigned to John Westly Peirce. I sent the oil to the bark *Pioneer* Captain James Hazard in the beginning of December. I sold one boat of the *Amie Ann* to the *Pioneer*, with its masts, rudder, sails, oars. I had two spare whale boats, and I thought I could sell one. The *Pioneer* is a whaling vessel. I also sold to the *Pioneer* 21 barrels of beef, 1 cask of bread, 1 cask of molasses and 1 cask of syrup.

By the Court: I sold these articles for the sum of \$456.59 excepting the spars which may be worth \$25. I knew the "*Pioneer*" at New Bedford. I sent notice to the owner at New Bedford of the above transaction.



Examination by Mr. Pellereau continued:—I think as far as I recollect the provisions were sold some time about the 10th of December and boat was delivered some time in January. At that time I was waiting for orders from Home from the underwriters and my agents. The "Amie Ann" was condemned. On the 14th of November last I wrote to the Consul a letter of abandonment. The Consul did not accept the abandonment and take charge of the ship. The ship remained under my control and I resided on board. During all that time I was waiting for instructions from home. When the instructions came I wrote to the American Consul for my register and ship papers in order to sell the vessel. They were registered letters offering to pay my bills or all just claims against me. I wanted to sell the ship because the insurers had given her up in part payment to me and my brother-in-law. I received a power of attorney the one just now produced from John Westley Peirce to sell his share. When I applied to the American Consul, he replied that he would give me the Register and papers of the ship when I should have paid in gold his bill amounting I think to \$2038.81. That bill contained certain items which I could not admit. I wrote twice for the items, and have not yet received the answer. I received some items but not all. Some time in December he sent a bill of \$600 to be paid in American gold or its equivalent. I had to send summonses by my attorney for the Register and ship papers to the Consul. I at last abandoned the ship to the Consul on the 6th or 7th of May last. Up to that time the ship remained in my keeping, possession and property. I did not say that it was because I was tired of whaling that I abandoned my ship. I saw the bark "Herald" at the Bell Buoy. She left in November last I believe it was on the 18th. Four of my men embarked on board. She is a whaler of New Bedford. The names of the men were Joe Elveda, Joe King, Antone Kern a german and the fourth Frank Frater a portuguese, who was known on board by the name of Blue Skin. I knew the bark Atlantic, she left on the 30th of November, two of my men Emmanuel Francis and Manuel Marshal left on that ship. Joe King could not have been here on the 12th of December of last year, nor A. Kern. Joe Peckoe who may be Joe Elveda, Emmanuel Francis and Emmanuel Marshal could have been here in December last year.

(Mr Newton stated that he will prove in due time that altho' the men are said to have left the colony before the letter appeared in the *Commercial Gazette*, yet they had signed a written paper containing the statements mentioned in the letter.)

I read this letter the day it came out. I am in the habit of reading the papers at my agents' office, and I read this letter and the remarks that accompanied it. Several days after I went to the *Commercial Gazette's* office. Mr Robinson of the firm Houdlette & Co. went with me. I saw Mr Channell in person. I asked him to show me the original letter that I might see the signatures. Four of my former crew were with me at the time. They had told me that they had not signed the letter. Their names were on the letter. They

did not enter the office, they were in the adjoining room and I went with Mr Robinson into Mr Channell's office where I asked for the sight of the original letter. Mr Channell refused to show me the letter saying it was his only protection and I might bring him before the Court where he would be bound to show it. I then went away. I never went back again to Mr Channell's. Mr Robinson in my presence asked Mr Channell who had handed him over the letter. he said it came through William the cook, but he did not positively say that William had handed it in. I sent to the *Commercial Gazette* for publication a letter from one of my men, it was published in number 6667, dated the 2nd of February 1872. The letter was signed by Philip D. Lord. My wife wrote it I believe. Mrs Peirce herself wrote it and read its contents to Lord who signed it. I did not ask nor did Lord ask Mrs Peirce to write it. She did it of her own accord. The letter was published in the *Commercial Gazette* when we applied. Subsequently remarks were published in the *Commercial Gazette* of the 5th of February 1872 in No. 6669. I received at sea a letter from Henry William. The letter shewn me is the one I received and which I produce. He did not give it to me personally but he placed it in my cabin and told me he wrote it.

Mr Pellereau stated that he produces the letter.

Mr Newton opposes.

But the letter was produced reserving the rights of parties to take the point on the arguments of counsel.

Before proceeding to the cross-examination of Captain Peirce, by consent of parties it is agreed that George Jenner a plaintiff's witness should be examined first.

George Jenner is sworn and examined by Mr Pellereau states as follows:—I was the Police Magistrate of Rodrigues. I was there in April last. I recollect the Bark *Amie Ann* entering at Rodrigues somewhat about April. The vessel remained there about 14 days, but certainly more than 10. I distinctly remember having been on board twice. I might have been three times but certainly not more than four. I had frequent and daily opportunities of seeing the officers and crew of the *Amie Ann* during her stay there. I know what scurvy is. I have had it. I have seen hundreds with it. If the Officers and crew of the *Amie Ann* had the scurvy they must have had it slightly, since I saw no man who had any symptoms of it. I heard none of them complain of it. I should fancy that during the stay of the *Amie Ann* there, the crew were daily on shore either for water or fuel or permission on liberty. There is only one landing place at Rodrigues, that is to say one established landing place, and if they were to land at other places a constable is invariably sent to see what is disembarked. They can land at any other place without any permission, and when a constable is sent it is to be assured that no counterband goods are disembarked. I never saw or heard of burying any of the crew of the *Amie Ann*. I never saw such a thing as burying men for scurvy, but I have heard of it from many American captains. On the beach of Port Mathurin the burial of men could not have taken place in the day time without my know-



ing it. I know Mr Raffan, he was a trader at Port Mathurin, he kept the largest shop there. His shop may be about 60 yards from the beach and from about 120 to 130 yards from the landing place. I saw a man whom I was told was a cook on board the *Amie Ann*, he was a short built man, about 5 feet 6 inches high, with sandy hair, short red whiskers and I believe his moustaches also. I remember the man whilst going out picking up shells, he was stung by a "laffe volant" he was brought to me in agony, I applied the usual remedy which consists of a lemon cut and applied sheathing hot to the wound, I was then with him during one hour and a half. The captain said to me: here is my cook who has been stung by a fish. The captain himself brought the man to me and asked me to do something for him. I heard no complaint whatever brought against the captain by any of his crew. I knew Captain Peirce during the 10 or 14 days he was at Rodrigues, but I had never seen him before. From what I could judge on my three or four visits on board the "*Amie Ann*", there appeared to exist the greatest good feeling between the Captain and his officers and the Captain and his crew. The officers spoke of him in the highest terms. Those officers were the mate, 1st mate and 2nd mate. I mean Macomber, Peirce and Smith. I dined with the Captain, his wife and the officers, and I witnessed the greatest cordiality among them.

Cross-examined by Mr Newton: I remember Mr Macomber and Mr Peirce speaking to me about the Captain, but I never spoke to Mr Smith. Mr Macomber on one occasion said that the old man was a good fellow, but rather quiet. This is the only observation which I particularly remember having been made by Mr Macomber, respecting the Captain, and it is from that observation alone that I inferred that he spoke in good terms of the Captain. I cannot give the particular expressions used by Mr Peirce, but he was very often on shore with me and he used to speak in the most favourable manner of the Captain and his wife. His observations were not always respecting the Captain, but men of that sort always speak of their work and sometimes of their Captain. Seeing as I did, the Captain sitting at his own table with his officers, hearing him at all times, mixing in conversation without restraint, and then hearing from them individually expressions of good will, I naturally concluded that there was good feeling among them. I cannot give any actual expression mentioned by Peirce, I heard him using those expressions of good feeling towards his Captain very often. I never heard of any burial of men at Rodrigues for the purpose of curing the scurvy.

Captain Peirce cross-examined by Mr Newton states as follows: I have not yet found the book which I promised to produce yesterday and which contained the list of some of the provisions which I shipped when I left New Bedford. When I packed up my things on board the ship, I must have mislaid it somewhere. I left the ship four weeks ago. My things are stored at Houdlett's. When I said yesterday that that book was at Houdlett's I thought so and I hope

to find it there yet. I always kept it in my medicine chest drawer which is at Houdlett's. I looked into the chest drawer yesterday and could not find it, I must have mislaid it. Besides the list of provisions I shipped at New Bedford it contained hundreds of articles that I cannot remember. The particular use of that book was to enter whale ship stores. That book was about 5 inches long and 4 inches wide. I did not continue to make the entries of my stores in that book after I left New Bedford. I used it four weeks at New Bedford to enter my stores. I may have used the book afterwards and wrote something not relating to my stores, but I don't remember exactly. When at Floris Island I entered firstly in my memorandum book and then in my disbursement book the stores that I bought. The memorandum book that I speak of was a different book from the first book I spoke of. I did not use the first book that I have spoken of because I had another one which was more handy, and I could carry it in my pocket. The entries from my memorandum book were copied in the Disbursement Book the next day or the second day, it might have been 3 or 4 days afterwards. I can swear that it was less than a month after. I cannot swear that it was less than a fortnight after. The stores I bought at Fayol. I entered the items first in my memorandum book. I cannot swear how long after I had entered in my note book the items with regard to Fayol, I copied them in my Disbursement Book. I should not wish to swear it was done within a month. I cannot swear whether the two entries of Fayol and Floris were done at the same time or not. I am sure I cannot tell whether these entries were made at the same time or not, but I am sure of the correctness. I cannot swear whether the entries of the stores purchased at Tristan Dacuna in this Disbursement book were or were not made at the same time as the above two entries. As regards the disbursements at Mahé, I can swear that they were not made on the same day as Tristan Dacuna, Floris and Fayol. I can swear that the disbursements at Johanna were not entered in the Disbursements Book at the same time as the disbursements at Mahé. The ink looks darker in the entries at Rodrigues. When I sailed on my whaling voyage from New Bedford I took salt provisions, fresh provisions, bread, flour, beans, rice, dried apples, currents, cod fish, hams, preserved meats, tea, coffee, sugar, pickles, vinegar, molasses, and lots of other stores, no onions and perhaps 20 or 30 bushels of potatoes, no spirits, no beer. The tea and the coffee were taken for the crew. They had tea and coffee during the whole voyage. I did not take any lime juice from New Bedford. My crew had no lime juice. Our ship could not take lime juice. We are not obliged to take lime juice, some vessels take lime juice. I got some from the *Lancer* Capt. Massy, New Bedford in april 1870. I had



a gallon or two. I took also some limes at Johanna and squeezed them. I bought three barrels of limes. I got about six gallons from the barrel when squeezed out. For a year from June 1869 to July 1870, I had only about 2 gallons of lime juice on board. I bought the barrels, one was to pickle them, the other I squeezed part of it, and ate the rest, and the last barrel we ate also. I squeezed the juice about 4 or 5 gallons. I had 2 or 3 gallons of lime juice from the *Pioneer* in August last. If the Captain gives me a few gallons of lime juice I am not supposed to put it down in my book. Such things are not entered any where. I did not take a note of that lime juice that I got from the *Pioneer*. Such a thing as sugar I must pay for. I paid the Captain of the *Lancer* for 80 pounds of sugar that I had got from him. I do not think there were more than 10 gallons. I do not remember of any more lime juice. That was sufficient for the whole voyage. I think half the whalers have not got five gallons. I had no occasion to give the seamen lime juice. The lime juice that I had on board was to make lemonade. The crew had some of it. I did not take down all the stores I purchased at New Bedford because I may have forgotten some, and all the bills had not come in; some stores were shipped by other persons than me. When I spoke of the mate Macomber yesterday, I meant that the mate had not put in the Log book all the stores that had been used during the voyage. It is the duty of the mate to do so. Macomber was mate only four months from home. There are no entries in the Log book with regard to the provisions. Macomber had a separate memorandum book in which he entered the provisions consumed on board. I suppose it is the Captain's duty to look at the Log book and see whether it is regularly kept. I do not think that during the whole voyage I looked at the Log book more than three or four times. It was much handier for the mate to keep an account of the provisions consumed on board, in a small memorandum book. They are more particular in merchants' ship about the Log book than in whalers. Our law does not compel the master to look in his Log book. I think I am not responsible for any bad entries in the Log book. It is the mate who is responsible. It is my opinion. I am bound as a captain to keep a list of all the provisions consumed on board. I have not got sufficient materials to make up the account of the provisions used during the voyage. The mate has every thing in his little memorandum book which I have not got, and I have not means to have the memorandum book kept by Macomber. I have got every thing to make up my account except the account of provisions.

The case was then postponed to Tuesday the 11th June.

(To be continued.)

The case of *Peirce v. Channell* was postponed to Tuesday next:

## SUPREME COURT.

*Tuesday, 11th June 1872.*

Before His Honor Sir C. F. Shand Kt. and the Honorable N. G. Bestel.

CONTINUATION OF THE EVIDENCE IN THE CASE OF  
*PEIRCE v. CHANNELL AND WIFE.*

Mr Pellereau moved that the memorandum book which has been found be put in.

This was ordered to be done.

The cross-examination of the plaintiff Peirce continued by Mr Newton: The book I produce is merely a note book. I sometimes used ink and sometimes pencil with regard to the entries contained in that book. That book is my memorandum book. It contains only an entry of provisions. I can produce certain receipts for provisions which I took at Rodrigues. I dealt at Rodrigues with Mr Jenner mostly, Mr Jenner had money to lend. I could not swear whether there were any receipts for the provisions which I may have taken in the other ports I called besides Mauritius, until I looked through my papers. When I arrived in Mauritius in 1871 I was not short of provisions. Some of the provisions which I took in Mauritius were to be consumed in this port and some were to be carried to sea. I took here for the purpose of being consumed at sea 2000 lbs of sweet potatoes, 1000 lbs of dry onions and 50 pumpkins and some preserved potatoes in cans,—14 cans. This receipt from Hammond were for articles which were meant for the crew if they needed it. The crew got some of the tea mentioned in the receipt. I had tea when I came here and every thing else which the ship required. I bought 5 lbs of tea from Hammond for use. The 15 lbs of white sugar were for the cabin. The brandy and the port wine are not meant for the crew, they were meant for medical purposes. I interfered to prevent Macomber from beating Denis Shay. I told Macomber to let Denis Shay alone. I sent Denis Shay to the wheel. I could have talked to Denis Shay without sending him to the wheel, but there were some men who were in liquor, I thought it was better to talk to him at the wheel because sailors would not be around him listening. I had nothing peculiar or secret to tell Denis Shay. I was afraid that the rest of the men might come after and interfere whilst I was speaking to him. I had that fear because it is often the case that when sailors are in liquor they come aft, are saucy and deal with things they have nothing to do with. When Denis Shay was at the wheel I talked to him from the top of the house. I told Denis Shay that I was disappointed at his trying to run away from the ship, that when he first came on board he was a good man, and I calculated to make a boat steerer of him. There was some body at the wheel before Shay arrived there. I don't recollect who was there before Shay arrived, it is three years since. I don't remember what Shay answered. I never heard of any complaint made by Shay against me nor any one making any complaint against me. I do not



know whether Shay made a complaint against me before the District Magistrate, but I suppose he did so. I was convicted before the District Magistrate to pay £2 and the costs. Shay entered a complaint and I suppose the American Consul put him up to it. I cannot swear to that, but I had reasons to believe it. I received a summons to appear. It was a complaint for different facts some of which had taken place at sea. Denis Shay shipped on board the schooner Emily under the english flag, sailed for Rodrigues. She was gone four or five days and she returned leaky. After his arrival back Shay complained against me for almost chocking him. I pleaded guilty of almost chocking him in the Dry Docks of Mauritius. Another complaint in the summons was for a fact that had taken place at Floris. I suppose that in the complaint with reference to what had taken place at Floris, he alluded to the fact which occurred when I sent him to the wheel. There never was any communication between the Consul and myself before I was brought before the District Magistrate. I swear that I had never been informed before that of Denis Shay's intention to bring a complaint against me, with reference to the fact which took place at Floris Island. I wrote a letter to the Consul after I had been summoned, asking him to defend the case. The letter shewn me dated the 9th December 1871 is the one I wrote to the American consul. In the letter I allude to a circumstance which had taken place about two years ago in the Atlantic Ocean. A circumstance had really taken place. The circumstance I referred to was about Mr Macomber pounding Denis Shay. I think it will be further proved that the consul told Macomber to lay on every thing to me. The consul refused to give his advice in the case of Macomber v. Denis Shay, he told me he would do everything to injure me and to take every dollar from me which I had. I think I did not receive an answer to that letter. I cannot swear whether I received an answer. After looking at the second letter dated 11th December 1871, I say I did receive an answer from the consul. I felt a little anxiety about the case. At that

time I was busy on board the *Pioneer* shipping my oil. I say that it was impossible for us to know after that accident whether the ship leaked or not, after a whaler had been sometime at sea and had some oil on board, the grease of the oil forms a kind of coat at the bottom of the ship and prevents the water from getting access to the place where the pump draws.

The case is postponed to the 12th June.

Wednesday, 12th June 1872.

Before the same Judges.

Cross-examination of Captain Peirce the plaintiff continued : I now beg to explain that part of my evidence in which I said I had the originals, I have only copies, the originals I sent home. I sent those original letters to my agent for him to use for what purpose he thinks fit. I sent those letters to my agent as he might want to know what I was doing so long. It would show my correspondence between the American Consul and myself. I did not lay before the American Consul the case respecting what took place in the Atlantic Ocean, because I was very busy at the time. I can't tell the reason for which I did not give to the American Consul the circumstances connected with the case about which I wrote to him. I was busy at that time. I had reason I suppose for not writing more fully than I did to the American Consul. At this distance of time I cannot say what those reasons were. It is likely I told the Consul but not in writing that Macomber had committed the assault but not I. I cannot say at this distance of five months whether it was before or after I wrote the letters of the 9th and 11th of December that I spoke to the Consul about that assault, it was by way of conversation that I did so if I spoke to him at all. I cannot swear whether I spoke to the Consul at all about the matter. I have been to see the Consul at his office on business, I went to see the Consul to get the amount of the ship's bill. The principal thing I went to see the Consul for was to see about my bill. From what I found on trying the pumps I could not say whether the ship leaked or not after she had struck the reef. This took place in the month of August last and I arrived here in October. I think the ship leaked a little, but not to alarm me during her voyage from Denis Island to Mauritius. The ship must have leaked since there came water more than usual through the pumps. She made more water than she did usually. She was in the habit of making some water since, we used to pump once a week. I began travelling whaling in 1845. I have been master of ships since 12 years. I can tell when a ship leaks to an alarming extent, but when she does not leak to an alarming extent I cannot say nor can any one else say when at sea, because on board of whalers we always carry water. To my knowledge there is no entry made in my Log-Book of the ship being leaky. I made an entry in the Log-Book as regards the striking of the reef. (Witness points in the Log-Book an entry of the 25th August which runs thus :

These 24 hours commence with fine breeze from S. E. at 3 p. m. felt the bark touch slitley the 2nd time, heavy hove in some of the cable sounded astern got 2 fathoms, saw a piece of the shoeing picked it up 8 feet 9 in. in length &c.



at 4 P. M. saw a whaling bark to windward of the island at 8 halled ahead in 4 fathoms, left both anchors down at 12½ midnight struck very heavy hove up and stood to the Wd at 9 A.M. round the Pioneer at 11 &c.)

The entry in the Log Book about the accident at Denis Island was made by the mate. I did not see it myself but I asked the mate whether he made an entry of it. He said yes, When I arrived at Mauritius I was under the impression that the ship leaked. At the time of my arrival outside I was under the impression that the vessel would require repairs. I did not call in this port only for the purpose of having the ship repaired, it was not my principal object. I had two or three objects. I do not think I reported myself to the Port Authorities that I called in for repairs. I reported to my agent that I called in for repairs. I think I told to Captain Hazard as I saw him out side, that the ship leaked a little. I do not remember whether I said to Captains Wales and Barclay the surveyors that the vessel leaked. A piece of the false keel came up when the ship struck and I put her in the dock to examine her bottom. I think one of the surveyors asked if the ship leaked when she got off the reef. My answer was that I could not tell, that the ship might have leaked a little. I did say to the surveyors that I thought the ship leaked a little. I think there was a leakage existing and I communicated it to them. The survey was made on the 9th of November. I went into the Dock on or about the 6th. I could not get into the Dock at an earlier day because the Dock was full. Two or three days before I went into the Dock I made my application. After examining the ship's bottom the surveyors said that it would cost more to repair her than she would be worth after the repairs. I cannot swear whether the 'Nota bene' written at the foot of the survey of the 17th of November 1871 formed part of the survey or was added afterwards. The report of the surveyors was first handed over to me in the office of Messrs Houdlette & Co. The first time I saw the document was sometime in November. I cannot say whether it was on the 17th of November. When I first saw the document I don't remember if the Nota Bene was there or not. I did not write home by the November mail, my wife wrote by my orders, I dictated the letter and signed it. I think that letter under date the 14th of November 1871, was written at the date that it bears. So that when that letter was written I had not the report of the Surveyors, I cannot say whether the Surveyors told me that the ship was not worth repairing before or after the letter was written, I think it was before. I know that the abandonment of a ship is a very serious thing (an important step) I have been told that the abandonment of a ship can only take place when it is clearly made out that the amount of the repairs to be made, would amount to more than the ship is worth. (Witness is shewn a letter dated the 14th of November addressed by him to the Consul, and it is read to him.) I cannot tell at present why I wrote to the Consul on the 14th of No-

vember for the purpose of abandoning my ship, before the Surveyors had written out their report, otherwise than that the Surveyors told me with their own lips that the repairs would cost more than the ship. I had not drawn up my protest, I entered my protest when I first came in here. I do not know how the protest shewn to me is dated the sixteenth of November. I do not know whether a protest can be made any other way than that shewn me. I cannot explain why the protest is dated the 16th November. I suppose it was filled out on the sixteenth, but I entered a protest when I first came here. I went to the consul and reported that I had been on shore at Denis Island. I cannot tell you how it is that the word leaky does not occur in the protest. I gave the American Consul full particulars and I suppose he knew his business. I am not sure that it was read to me. I cannot swear whether I mentioned anything about leaking to the Consul, but I gave him the whole particulars. I do not remember whether the Consul prepared the abandonment or not. I think the Consul did not prepare the act of abandonment which I applied for in my letter. It is not to my knowledge that the Consul gave me any reason for not preparing the act. I cannot say that I wrote to the Consul about the act of abandonment. I might have spoken to him about it. The Consul did not tell me by word of mouth that he would not prepare the act of abandonment. To my knowledge the Consul did not tell me that in the absence of any report shewing the condition of the ship, he did not deem it consistent with his duty to prepare an act of abandonment. I cannot say whether it was for the purpose of shewing it to the Consul that I caused a report to be drawn up by the surveyors. I do not remember having shewn the report to the Consul. I do not recollect the Consul telling me that the report was insufficient. I never told the Consul that the report was not strong enough and that I should have another made. I think the report was sent to America. I could not swear whether it was by the November Mail that I sent the report to the United States. The letter with the report was sent by me through Houdlett & Co. to J. W. Peirce. There was in point of fact a compromise made with the underwriters at home. My agents wrote that the underwriters had given over the ship to me over and above the \$12,000. I asked \$3,500 for the ship three or four months ago. The outfits I value at \$1000 deduction made of storage. The last bill the American Consul sent me was \$2,038. I was forced to abandon the ship as the Consul did not give me the necessary papers to transfer the ship. I did inform the Consul that I wanted to sell the ship. We talked the intending purchaser and myself of \$2,000. The name of the intending purchaser is Asher. Several others wanted to buy the vessel, among them was Renaud the butcher, but I was prevented from selling to them, because I had not the necessary papers to transfer the vessel. Previous to my receiving the letter dated the 17th of January the surveyors had recommended to sell the ship,



along side of her when she was in the Dock. It was expedient that the surveyors should recommend the sale of the ship. The surveyors recommended the sale along side the ship. I shipped my oil to the Cape. I deny most formally having given any instructions to captain Hazard to sell the oil at the Cape or to ship it to Europe. I denied having ever intended to ship the oil to Europe. My brother-in-law thought I had no other course but to ship my oil to England, as he was not aware that I could send it to America, the American ship *Pioneer* being at the time lying in the harbour here. I think there were two letters sent by me from here the 17th of November, one was a business letter and one a family letter, yet in both answers a mention is made of business matters, but they are not of the same date. I did not keep copies of all my letters either business or family letters. My brother thought perhaps I had no means of sending the oil to England, and he cautioned me to send it to the United States, he might have thought so, but not from any thing I had written to him. I never wrote to him that I should send the oil to England. There was a German on board the *Amie Ann* whom I have discharged, that was the cooper, there was another German whom I knew by the name of Antone Kern, I did not discharge this one. I discharged the cooper because he did not wish to go whaling any more. He preferred working with an engineer, he said he would get \$20 per week. Antone Kern preferred no complaint against me. The cooper made no complaint against me before the Consul. The Consul did not inform me if the cooper made a complaint against me. I discharged him before the Consul and at that time he preferred no complaint against me. I remained 14 days each time at Johanna or about that time. There was nothing due to the men whom I discharged previous to my difficulties in Mauritius with my officers and crew. My books will show that their bills are above their share of the oil. I estimate the value of the oil at about \$18,000 up to October last in the United States. I gave to the men whom I discharged, after the case which came off before the Supreme Court, orders of which the document now shown to me is a copy. The order now read to me is that given to an officer, and I did not settle with the officers as with the seamen I had discharged, because they had a larger share and something was coming to them. I was not bound to settle before my arrival at the United States according to my articles of agreement. The officers wanted to take their share of the oil out of the *Pioneer* in the harbour here. The order I now read is, in New Bedford, as good as an order on the Bank, that is the way officers are generally paid. It can be sold in this colony. The American Consul has bought many such orders. I offered to buy them myself at a heavy discount, because several of the holders having their wives at home, had drawn largely on account. I should have broken my agreement if I had paid here, New Bedford being the place where I had to pay. After our arrival in October, four or five of my men, perhaps more, went up to the Consul to complain; but this was after I had been here nearly a month. I put two of

my men in irons in the harbour here, about the 1st of November last; one of them remained in irons about two or three days on the deck during the day and in the hold during the night, after which he ran away, this was Froberg, the other Henry William, remained for a week at night in the hold, and during the day, on the deck. Also they were put in irons by orders of the American Consul for desertion. They had been arrested by the Mauritius Police and sent on board. I remember David Gregory, one of my crew, dying in the hospital here in April this year, about six months after our last arrival here. He came on shore in good health, and he had often remarked to me that he had never been ill, except in Mauritius where he had been in the Police Force before. He could not at first come on shore and did so about the 10th of December. On board he was always in good health and perhaps never lost a day's work during five or six months he was with me. I think he got chronic dysentery. A certificate would easily be got of the disease he died of, from the Surgeon in charge of the Hospital. I used to go to see him at the Hospital one or twice a week. My wife also went to see him there and gave him some gelly. At Rodrigues, Peirce, Macomber and Smith were in charge of the water in turn. I shook Henry Williams only once, abreast the fore-rigging starboard side. I have seen Macomber strike him several times, Macomber's temper is bad. I never saw Macomber take hold of Henry Williams by the hair. There must have been 8 or 10 on deck when I shook Henry Williams. This took place during the voyage, I believe south of Madagascar. I shook him hard and used some hard words. I also, as I have stated, collared the German cooper and pushed him over the chain, he fell backwards, I did so because he was saucy, he said he was a better man than I was and said he would not work. I gave him the push to drive him out of the way, he was standing right in the way where we were driving hoops on the casks to get water. I have paid no fine for smuggling. I swear that I paid no fine. I was condemned to pay a fine for landing 182 lbs of copper which I got at Tromlin Island and which I omitted to put in my manifest. I landed it as whaling gear and put it under the Crown Locks and sold it at auction. I was ordered by the Collector of Customs to pay a fine which was a little over \$300, and the Collector told me to petition the Governor to remit the fine, as he thought under the circumstances I had no intention of smuggling. I petitioned the Governor, and did not receive an answer. I never said arriving at Mauritius that my ship was in distress. My agents Houdlette & Co. wrote home to the underwriters that the ship was in distress after she had been put in the Dock, and examined.

The case was then postponed to the 13th.

(To be continued.)



# SUPREME COURT.

Thursday, 13th June 1872.

Before His Honor Sir C. F. Shand Kt. and the  
Honorable N. G. Bestel.

CONTINUATION OF THE EVIDENCE IN THE CASE OF  
PEIRCE v. CHANNELL AND WIFE.

Cross-examination of Captain Peirce continued by Mr Newton : The first officer W. H. Macomber was of a very bad temper, a drinking man. He did not drink on board, he was in liquor once or twice in the Dock and I took him on board. Pierce was a drinking man too, but not so bad as Macomber, he had an even temper. Smith was a drinking man too. I meant to say that when they came on shore they drank more than they ought to do. Pierce and Smith were not generally violent but in some instances they were. Macomber beat some of the men a good many times on board. He beat Froberg and Henry Williams. I do not remember at present any one having been beaten by Pierce. I say the same thing with regard to Smith. They beat some men but I cannot recollect any of those who were beaten. I have many a time remonstrated with Macomber and told him he must keep his temper, and still I kept him on board because I could not find any one to replace him as a whaleman. I remember having had a case with him before Mr District Magistrate Rouillard. I charged him with an assault upon me on board the ship in the Dry Dock, but I do not remember his making a like charge against me. The American Consul advised me to let him off upon my paying half the costs and Macomber paying the other half, so I did not appear at the trial, that was some time in November last. I am not aware that the American Consul paid my half of the costs. I offered to pay those costs to the American Consul, that was included in the American Consul's bill, the item was not objected to by me; the costs were comprised in the bill presented to me by the American Consul.

Re-examined by Mr Pellereau : Whatever distance of time it was I can swear that the entries I wrote in the Book of Provisions were made by me, whilst the provisions were fresh in my me-

memory. I had a memorandum book in which were the names of the purchasers and from which I transcribed them in the book of provisions. As soon as I had transcribed them I tore the leaves of the pocket book. All the provisions I purchased at New Bedford and those I got in the voyage were not consumed on board; some were sold to the Pioneer. There were also some given out on sale or barter during the voyage to get other provisions such as fruits, vegetables &c. With those two exceptions all the rest was consumed on board. What I got on barter was consumed on board the ship. I have found some receipts of the provisions I purchased during the voyage, I now produce four. Lord was with me when I went to Mr Channell's office. I was responsible for all the provisions which were on board, to the owners who were my brother and myself. No one was present when the Consul told me that he could do every thing in his power to injure me. I did not myself post the letters I wrote to New Bedford but they were sent to the post with Houdlette & Co's letters by their clerk. I discharged the German cooper by mutual consent. Antone Kern was also discharged by mutual consent before the Consul. The letters I above alluded to were sent on the 12th of December and the ship left in November. The order shown to me is the original order which I signed. I do not know how that order given to Pierce is here. There was a similar order given to Gustavus D. Smith. There was a charge before Mr District Magistrate Rouillard against Smith for uttering a forged order. He was committed into jail and kept there for 2 months. I don't know why he was liberated. When I speak of the forged order I mean the order given by me. Two men were ordered by the Consul to be put in irons, the order he gave was not a written one, he gave it verbally. There might have been some one present when he gave the order, but I do not remember. There must be a mistake on one side or the other with regard to my shaking Henry Williams, I may have shaken him twice perhaps thrice. I had difficulties with my men after I had difficulties with the Consul.

Mr Pellereau here applies for leave to re-examine the witness as to the signatures to the letter published in the *Commercial Gazette*. Leave was granted and the witness continues : I know the signatures of those of my men who can sign. It is not all of them who can sign. Levi Walker can neither read nor write, he cannot sign his name. John Laurence, Frank Frater and Joe Frank to my knowledge cannot sign their name. J. H. Macomber, Joe Elveda, George Lord, Froberg, Edward D. Foyles, Albert Nash, Isaac Miller, can sign their names. I know their signatures. I can swear to some of them. Looking at the letter now shown me and published by the *Commercial Gazette* I say that the signatures upon it which are genuine are those of William H. Macomber, J. D. Smith, Edmund Weeks and Henry William; those which I can swear to as not genuine are those purporting to be Levi Walker, there is a cross opposite the name of Levi Walker, but that cross was not there when this paper first came from Channell's. I think the cross was not there at that time. The other signatures that are not genuine are those of John



Laurence, Denis Shay, Henry Herron, José Frank, Joe Peckoe, A. Kern, Frank Drey. As to the signatures of Lord and Froberg I cannot swear whether they are genuine or not. Nor can I swear any thing as to those of Levi Butts and George Sprague. I swear that the signature of Charles C. Pierce is not genuine, he cannot write so well as this.

Cross-examined by Mr. Newton: As to the signatures I never saw Laurence sign his name, he generally makes his mark. I have seen Denis Shay writing, but I never saw him write his signature. I saw Herron write in the Consul's office and several other times. Frank Frater made his mark on the articles. I have seen the signature of Joe Peckoe several times in pencil. I have seen the signature of Antone Kern several times. I have seen Lord's signature three or four times. I have seen Froberg's signature on the shipping articles. As regards the others some of them cannot write at all, two of the Portuguese alone could write, to my knowledge. I cannot swear to the signatures of Lord and Froberg because signatures vary, I myself do not always write with the same pen and my signature is not always the same. I can only swear as to those that cannot write, that their signatures that are here are not genuine; some of them can sign. Charles Pierce's signature is not genuine though he can sign, it is too well written for him. I saw the paper shown me for the first time before the Master, I am not sure though. I have no idea how that cross got there. I saw that paper at Debaize's office before I went before the Master. This paper was in the ship's Log-book, I can bring proof of that, and I took it to Debaize's office without my noticing it. Lord went on board by the name of Muggin.

Re-examined by Mr. Pellereau.

I could not swear whether Denis Shay's signature is genuine or not.

The case was then postponed to the 14th June

Friday 14th June 1872.

Before the same Judges.

Philip George Lord, Plaintiff's witness sworn examined by Mr. Pellereau:

I was a seaman on board the *Amie Ann* Capt. Peirce, from the time of her departure from New Bedford up to the time she last arrived in Mauritius. I signed the articles of agreement in New Bedford. I can write and sign. During all the voyage, I had sufficient food on board; we had flour some time, some time hard bran and some time salt meat, salt pork. We had no vegetables whilst at sea, except potatoes, we had onions; I did not see any pickles on board, but we had some onions pickled up, we had fresh meat preserved in tins or cans, beef, mutton. I don't know whether preserved meats were occasionally used or not. Once in a way the cook gave us some in the galley. All of us had sufficient food on board. It was good food. I have been a sailor on whalers for about nine years. We had on the "*Amie Ann*" the same kind of food as I had on board other whalers. During the voyage at the places where we called, fresh vegetables and fresh meat were bought. I mean some beef, po-

tatoes, onions, and sweet potatoes. There were some pigs and hogs bought at Tristan Dacuna. We bought some live animals at Denis Island. I do not recollect all the places where live animals were procured. There was lime juice on board. We got some limes which we squeezed afterwards on board. I drank lime juice. All the crew had lime juice. Sometimes the lime juice was served out to us when we caught whales. I heard no one on board complain of the food. Scurvy never broke out on board. None of our men were buried in the sand at Rodrigues to cure them of the scurvy or of any thing else. Isaac Miller was one of the seamen on board. He had no symptoms of scurvy. I did not see any thing with the matter with him. I saw nothing with the matter on his knee. He was not lame. I saw no man on board ill. I have never seen any body off the work during the voyage from sickness. No one on board met with accidents. The captain behaved very well to us on board. He was not bad tempered. The captain never shook any of us, he never took any of us by the collar. I never heard the captain use hard language either to me or to any person on board. I cannot say whether the captain out of my sight collared any man on board. He never used any weapon to threaten or frighten any one. He never gave any cause to be afraid that he would kill or disfigure any of us. He never threatened to break our brains out. I never heard him used such language towards any of us. There was a man of the name of Denis Shay on board. He went on shore at Floris Island in the boat, Macomber was in charge of the boat. I did not go in the boat with him. I do recollect Froberg went in the boat with him. I saw Shay come back on board. He was beaten by the mate Mr. Macomber on board. I do not know why he was beaten. I did not see the Captain interfere, I saw the boat coming on board. I was on the deck. I was in the fore-castle. Macomber beat Shay forward near the galley. I could not see Macomber beat Shay but Shay told me that Macomber beat him. After they came on board I saw Shay at the wheel. I did not see the Captain near the wheel. I did not see the Captain nor heard him speak to Shay. He might have spoken to Shay without my hearing him. Macomber on board was a cross man. He was a good deal violent. He was swearing and threatening to take away men's lives. He was in the habit of striking, collaring and shaking the men. The Captain tried two or three times to stop him but Macomber took no notice of him. I do not recollect whether the ship struck at Denis Island, I was asleep. The Captain did not try to drive me out of the ship in Mauritius, nor any other of the crew. I have been discharged from the *Amie Ann* by the Consul himself, and it was not by my consent. When the *Amie Ann* arrived in Mauritius the last time, the Captain gave us two days' liberty. After that when I went on board the ship was in the Dry Dock. The Captain told us he would try and get her repaired and would then go South of Madagascar, that if he



could make 100 barrels of oil, or even if he could not make that, it would not stop him from going back to the United States, that he would give us a dollar a day if we worked at the ship in the Dry Dock, by stripping her of the copper. Some of the men began to grumble and asked for what was due to them on the voyage. The Captain told them he would pay them when they would have finished their work. They went to the American Consul and reported to him that the Captain would not pay them. The Captain said that he would put them in irons if they would not work. Then the men commenced speaking about the bad treatment and the bad grub. Then the Consul told them to come the next morning at 10 A. M. to his office, and he would discharge them. I don't recollect in what month. It was the third day after the ship went into the Dry Dock that the Consul told the men to come to his office the next day at 10 o'clock, and that he would discharge us. We all of us went to the Consul. He wanted us to put our names to a paper stating that we had been badly treated by the Captain. They all signed but me, the Consul wished to discharge us but I would not take my discharge. I never saw the paper which the men signed. I did not see the men sign it. I did not make any complaint to the Consul about ill treatment on board the *Amie Ann*, I did not sign any letter to be published in the newspaper concerning the ill treatment received on board. Nor did I tell any one to sign it for me. Being shewn the original letter bearing my signature, I say that I never signed the letter or authorized any one to sign it for me. I was told by Alfred Scott that Henry Williams put my name to it. I did not see the Consul give any paper to be signed by the men or read to them. I am actually a seaman on board the *Pioneer*. I know Sylvestre a seaman who was on board the *Pioneer*. I don't know the name of the Steward who was on board the *Pioneer* at the time Sylvestre was there, but the Steward is not now there. I did not, when Sylvestre was there, hand over to the Steward the *Commercial Gazette* containing a letter about the ill treatment on board the *Amie Ann*. I did not read that letter. I never read the *Commercial Gazette*. (Being asked to try to read the paper shown him the witness says): I cannot read out plain, I decline to try to do so, but I could read it for myself so as to understand what it is. I did not know Antone Kern on board. I knew a fellow who went by the name of Boy. He arrived with us at Mauritius. He has left Mauritius since, but I can't say when. He left on board the "Herald" an American vessel. I did not know Joe Peckoe, I knew a man named Joe. He has left Mauritius on board that same ship. I did not know Frank Gray, but I knew Blue Skin. He has left Mauritius on board the same ship. I know he left Mauritius. I know Manuel; he has left Mauritius on board the "Atlantic". Manuel and another man called Emmanuel Francis and Joe King left on board the "Herald." When I was at Rodrigues there was a German a cooper on board. I did not see him disfigured by blows he had received, he bore no marks of violence on his face. I did not see men in irons in Mauritius on board the "Amie Ann," nor did I hear of any. I signed a letter which was published in the *Commercial*

*Gazette* denying the ill-treatment. I signed the letter published in the *Commercial Gazette* denying the ill-treatment. No one asked me to sign it, Mrs Peirce wrote it out. I read it over myself and I approved of its contents and signed it. Froberg signed it also. I saw him sign it. Froberg also signed another letter denying the ill treatment. Joseph Frank put his mark to a letter which I did not read. He put his mark to a letter at the same time as I signed the one denying the ill-treatment. The letter was read out to José Frank by Mrs Peirce. I have mostly forgotten it. I could not tell any thing about it, I do not recollect what it was about. John Laurence also put his mark to a letter which was also read out to him by Mrs Peirce. I cannot say what it was about, I went to the *Commercial Gazette* Office after I signed the letter. I went with Capt. Peirce, I did not go into the Editor's room, I stopped outside. I have not my discharge with me. I did not receive an order for my share of the oil. The Captain did not try to cheat me of my share of the oil. The ship arrived here with whale oil. It is all on board the *Pioneer* now. It was put on board the *Pioneer* to be sent home to America. I never heard the Captain say that he would sell his ship or get her condemned. I do not know when the *Pioneer* is going. The oil may have been on board three or four months. I do not know why the *Pioneer* has not gone. I do not know when she will leave. The ship called here in May before our last arrival here. There were deserters in May from the ship: Albert Nash and a man who used to be called Brick-top I do not know his other name. I do not know if Miller was one. He did not leave with us in May. He did not come on board with us.

Cross-examined by Mr. Newton:—The letter in the *Commercial Gazette* was never read to me: I read it myself on board the *Amie Ann*. Mr. Sylvestre got it from one of the blacksmith's shops over near the Bethel. Mr. Sylvestre brought it on board the *Pioneer*. I did not ask him for it and he did not give it when he got it. He called me after and read it to me. Question: You have just told me that no one read it to you? Answer: I thought when you put me your first question that you were speaking of the letter I signed to the *Commercial* myself. I did not understand Counsel. Mr. Sylvestre read the letter out to me (the letter of Henry William.) The steward was present. I said nothing. My opinion was not asked about it. I suppose not. No remarks were passed about the letter either by myself or by anybody else. They read out the signatures to me. My signature was read out to me. When I heard my signature read out I said I have not signed my name. There were remarks made by me. There were no remarks made by me at the first of it. The others made no remarks when I said this. I was then engaged on board the *Pioneer*. I volunteered to sign the other letter sent to the *Commercial* signed by me.



I went to Mrs Peirce's cabin on board the *Amie Ann* about a week after Sylvester read the letter to me. I swear that it was a week afterwards but not positively. I swear it was not the same day. It might be more than two days afterwards but I cannot say. It was about half past ten in the morning that Sylvester read the letter to me. I went on board the 'Amie Ann' on that day. It was not on that day I sent the letter. I do not recollect whether it was in the morning or the afternoon that I returned to the 'Pioneer.' Next morning I went on board the 'Amie Ann.' Captain Peirce told me to work. On that day I did not sign the letter. I swear that. I went back on board the 'Pioneer' the next day. I did not go on board the 'Amie Ann.' The day after that I did not go on board the 'Amie Ann.' The fifth day I signed the letter and this I swear. I can give no explanation how it is that my letter appeared two days afterwards. I have not got a good memory. I cannot give any explanation of the contents of my letter. I do not recollect its contents. I am sure what it was about. I put my name down in that letter, that Captain Peirce might not get into trouble. I do not recollect if a tide waiter was on board. I went to the Consul along with the others. I did not know the object of the visit to the Consul, I went like every one else to get an idea of the spot. If I had an idea I would have put my name to the document. I went from sheer curiosity to see what was up. I have not yet settled with him at all, the oil is on board the *Pioneer*, and I am going home. I never saw the Captain give a push to the cooper. I do not recollect the cooper falling on the chain. I know the gentleman, Mr Winn who was tide waiter on board. (Mr Winn is called and identifies the witness as having been a sailor on board the *Amie Ann*.) Mr Winn may have been there when the paper was read out to me, but I did not see him. I never said before the steward or Mr Winn that I have signed the letter and said that much more could be said against the Captain.

Re-examined by Mr Pellereau : I swear I never signed any paper or any statement complaining of ill-treatment by the Captain. Upon my oath neither I nor any of the crew were ill-treated by the Captain. I repeat that there was no scurvy on board.

After the witness had been examined, as the 2nd term of the Court was over, it was agreed that the examination of the other witnesses should be continued before a single Judge in Chambers during vacation.

(To be continued.)

# SUPREME COURT.

Tuesday, 20th August 1872.

Peirce v. Channell & wife.

Wednesday, 21st.

Peirce v. Channell & wife

# SUPREME COURT.

Tuesday, 25th June 1872.

In Chambers, before the Honorable N. G. Bestel.

CONTINUATION OF THE EVIDENCE IN THE CASE OF  
PEIRCE v. CHANNELL AND WIFE.

Charles Gifford, fifth witness for the plaintiff, examined by Mr Pellereau : I am a seaman on board the *Pioneer*, I was formerly on board the *Oretaf*, I have been on board the *Amie Ann*, I worked on board of her in Mauritius sometimes for one, two or three hours at a time, not a week. I do not know how often I worked on board, it was not a week. It was after her last arrival here. I went on board at Johannah every night. I went to have a talk with my friends. I was on board in



Mauritius when she was here the first time. I used to go on board every night during the time she was here. I saw the food they had to eat two or three times and I partook of it. I had no fault to find with it, it was very good. The men on board always said they always had good food and plenty of it too. I went on board of the *Amie Ann* twice when my ship met her. I saw the food they gave the men at sea, it was good. The crew always gave the Captain a good name and never found fault with him.

Cross-examined by Mr. Newton: Sometimes I would take food every night on board, sometimes I did not. Every time I went on board I partook of the food. I suppose it was the supper of the men that I partook of. Sometimes they ate with me and at other times they did not, we had beef, pork, potatoes. This was in the harbour here, I took supper only once at sea, this was off Seychelles. On that occasion we had bread, beef, pork and potatoes, generally we had beef and pork whenever I ate on board the *Amie Ann*. We also had bread and bananas. At Johannah we had fresh beef and fruits. I ate on board the ship *Amie Ann* at Johannah four or five times, this was at supper. The whole crew of my ship used sometimes to go. We did not always go on board at supper time. I am not sure whether it was fresh or salt beef we had at Seychelles. We had just left Port. We had plenty of bananas and we had oranges and limes. At Johannah we had other fruits, cocoanuts, mangoes and several other kinds of fruits, and there were plenty on board. There were plenty of vegetables, potatoes, tarro, plenty of beans. I saw no cabbages, carrots or turnips, they may have been on board but I did not see them. When I say that the man gave the Captain a good name I mean that they said he was a good man and treated them well. I heard two or three say so, but I do not recollect their names. I can give the nick names Mois and Joyce, those are the only two nick names I remember. I remember also Denis Shay. Mois said that the captain treated the men well. I do not remember whether the others said anything about the captain; but I know two or three who told me that they liked the captain, we talk about the captain because this is first thing we talk about. Most of the crew were Portuguese and I did not speak their language. The Portuguese did not communicate much with the other men. I knew the names of the men, but I have forgotten them now. I suppose I could recollect their names in a day or two's time. I knew the names of the officers Macomber, Pierce and Smith, because I have heard them spoken of.

Re-examined by Mr. Pellereau: I never saw Shay till he came to Mauritius in May last year. I did not see him in October. Shay talked about the captain and said he treated him well enough.

James Sweet Hazard, captain of the American whaling vessel *Pioneer*, sworn and examined by Mr. Pellereau: I have been 17 years captain of whalers. Log books are kept on board whalers, it is the duty of chief mates to keep them. Every thing particular that occurs on board is to be noted down on the log-book. Scurvy or any disease whatever is also to be

noted on the log-book. I have seen scurvy. I know what is is, I have seen it having been 37 years at sea. I went on board the '*Amie Ann*' at sea in August 1871. I had meals on board of her. My ship was in company of the '*Amie Ann*' off Denis island, and I often had meals on board of her. I saw the officers' table and ate with them, it was as good as any ship had, it was good and plentiful. I saw what the seamen had, they had plenty to eat, and plenty to spare. They had beef, pork, flour, bread and plenty of every thing that whaling ships had. There was no scurvy on board the *Amie Ann*, they could not have it with such a large quantity of fresh provisions, beef, pork, potatoes and chickens. I was here in May last year when the *Amie Ann* called. I saw the American Consul receiving Captain Peirce in May last, at his office day after day. The Consul received Captain Peirce in a very friendly manner, and his wife too and myself. There was no complaint made at that time against captain Peirce, things went on smoothly. The Consul frequently spoke of captain Peirce in the highest terms. I was not here in October last and arrived on the 15th of November. Shortly after, whilst the *Amie Ann* was in the Dock, I went on board with the Consul. The Consul went on board to get shells. He could not treat captain Peirce and his wife any better than he did then. He behaved in the same manner for a spell, but afterwards he picked up with the men, went against the captain, and the scales were turned round. I do not know the reasons of that change, but the Consul told me that his reasons were that captain Peirce was a mean man who wanted to cheat his crew and rob the owners. He also said that he would ruin captain Peirce, run him out of every dollar and clean the fellow right out; because captain Peirce wanted to cheat his crew and his own brother and send the oil to England to be sold. The whale oil from the *Amie Ann* was put on board the *Pioneer*. There was an agreement between captain Peirce and myself with regard to that oil, I was to take it to the Cape of Good Hope, there to tranship it to the United States, New Bedford, together my own oil. I was to give the oil to John W. Peirce. The oil was transferred from the *Amie Ann* to the *Pioneer* because Captain Peirce wanted to get the oil saved and send it home. He could not have done so on board the '*Amie Ann*' because she was not sea worthy. There was no agreement between Capt. Peirce and myself which could have gone to the prejudice of those who were entitled to the oil. Bills of lading had gone home months and months ago.

(Upon a question put by His Honor Mr Justice Bestel, witness says: My ship *Pioneer* is detained in the harbour because she is tied down by the Consul who has taken all my men 31 in number from my ship and discharge them without my consent. I am robbed, piracy in Port Louis harbour. All that was done to me because I took this oil of the '*Amie Ann*' on board my ship. The Consul said I shall whip you out of your ship as I have done captain Peirce out of his, but he can't spell able, that is put me out.)



Examination continued by Mr Pellereau : It was by the Consul's advice that I came in to take the oil on board. Six of my men refused duty when required to ship that oil. I went for the Consul and brought him on board my ship. The men were called before him and in his presence they refused to take the oil on board. Thereupon he took the six men into my boat to his office, and two hours afterwards they came back and they were discharged. The oil is still on board my ship since the 6th of December last. By the keeping, it has lost 1325 gallons on account of the leakage ; hot weather is the cause of it. The oil is in properly made casks. I bought one boat from the *Amie Ann*, the second hand one with sails, oars and rudder. I wanted t and Captain Peirce having four more boats could spare it. I also bought some provisions from him viz : about 20 barrels of salt beef, one cask of molasses, that is 100 gallons, one cask of syrup, one cask of bread, I believe no more. He had them to sell and could replace them.

Cross-examined by Mr Newton. The purchase of articles took place sometime in December last, as far as I remember. I can't say whether the bills of lading for the oil were forwarded to the United States by the December or January mail, but I could, on looking at the bills. On the 7th of December I went to the Consul in order to have my papers to clear my ship at the Custom House. I intended to take my ship out to the Bell Buoy that day. The oil was then already on board my ship. I cannot say whether I had then bought the boat, but the provisions I had purchased from Captain Peirce were then on board. I was not very badly in want of that boat, my mate wanted a 30 feet boat, that was the reason why I bought it. My mate was Charles Sylvester. I cannot swear whether it was before or after the 7th of December that I bought that boat. I bought the boat, but I can't say either the date of purchase or delivery, I have given up the idea to go to Good Hope, I am going to New Bedford, United States. I intended going to the Cape for the special purpose of shipping my oil and that of Captain Peirce, and then keep on cruising. I have been laying here 7 months without a chance of shipping my oil home. In December I had been here a month. I knew that at the Cape I should find a regular line of ships to Boston. I saw it by the shipping lists in the newspapers. Besides I had been there several times myself. I expected to get to the Cape in March, as I thought of cruising for whales on my way there. I saw the shipping lists I refer to, daily at Houdlette & Co's office. It was from the shipping lists and also from information received from other masters of ships, and also from my own information that I knew that I could in any month ship the oil there for the United States. I intended to go to Table Bay, Cape Town. My intention was to ship the oil to Boston. I should have written to my agent at New Bedford from Boston. Boston is only

40 miles from New Bedford. If I had not found a ship at the Cape I would have kept my oil on my ship. The bills of lading were sent home before hand, because they contained the clause that the oil would be shipped to the Cape to be transhipped to America, without knowing the vessel to be taken at the Cape. The bills of lading could not have been sent before the seventh of December, because I had finished stowing the oil itself on the 6th. I swear that there was no complaint brought against me by any of my men before the American Consul for assault or ill-treatment. I am not aware that one of my men was ill here, and that he died on his way to America. Two men were sick in the month of December. The Consul brought a complaint against me for breaking his door. I am not a friend of the Consul. I am a friend of Mr Robinson and of Captain Pierce too. I never authorized any one to write the two papers dated the one, 6th December 1871 and the other 17th January 1872 produced, purporting to be invitations to the Consul. I sent one invitation on the 6th of December 1871 and the other I can't say when. Mr Robinson wrote both of the invitations. Mr Robinson was to have been present at the tiffins. Upon my oath I know that Mr Robinson and the Consul were not in speaking terms, but I cannot say for how long. Since I have been here I know that they are not in speaking terms. I know it from what Colonel Pike told me then. I have known since May of last year that Mr Robinson and the American Consul are not on friendly terms, but I have seen them do business together. We invited the Consul to our tiffin, altho' M. Robinson was to be present, because we thought that his unfriendly terms with Mr Robinson were no reason to prevent him from attending ; and on the two occasions it was the same, and our invitation was polite.

On the Captain Hazard saying something Mr Newton moved that the same be recorded.

Mr Pellereau objected that it was not in the deposition that the phrase was uttered, and it ought not to be recorded.

His Honor however considered that Mr Newton might question the witness on this point, and he warned Captain Hazard that he was still upon oath and ordered him to answer.

Mr Newton put the question : Did you not say just now that you only said half of what you had to say against the Consul ?

The Captain Hazard said : Yes, I did say so and I wish to explain. Colonel Pike has written home to my agents to say that he has pulled me out of the gutter drunk time after time. I say this is false.

The case is postponed to Friday the 28th June at 11 A.M. the witness being ordered to bring and produce the bill of lading he mentioned in the course of his deposition.

*To be continued.)*



SUPREME COURT.

Friday, 28th June 1872.

Before the Honorable N. G. Bestel, in Chambers.

CONTINUATION OF THE EVIDENCE IN THE CASE OF  
PEIRCE v. CHANNELL AND WIFE.

Captain Hazard, of the Bark *Pioneer*, is sworn and his examination continued by Mr Pellereau; he says as follows:—

I produce the bill of lading I mentioned in my examination. I know at New Bedford John Westley Peirce, I know him since boyhood. I do not know whether I can swear to his handwriting but I have seen it often. If it was shown to me probably I should know. The letters dated respectively: New Bedford, 24th January 1872 and New Bedford 28th of March 1872, are written and signed by him. I swear to this. With regard to the letter dated 15th January 1872 I can swear to its being written by him except the portion of it beginning with the words: "If the bark is condemned"... to the end of it. With regard to his portion I cannot say whether say it is of his handwriting or not. I swear that the signature affixed to the power of attorney shown to me dated the 16th of January 1872 as being that of John Westley Peirce I also swear that the addresses on the three covers shown to me are in his handwriting. I have seen the *Herald* and *Atlantic*, American ships in this harbour at Port Louis. To the best of my recollection the 'Herald' left Mauritius about the 25th of November last, and the 'Atlantic' about the end of the same month. I was with Captain Sturges of the 'Herald' when he shipped four of the crew of the 'Amie Ann' at the Consul's office, I mean when the Shipping Articles of Agreement were subscribed at the Consul's. I do not know the names of the men. I think they were all Portuguese. Two of the men of the 'Amie Ann' left by the 'Atlantic', one was regularly shipped, and the other stowed himself away. Question by Mr Pellereau: Assuming the list of provisions now shown to you to be a correct copy of the list of provisions embarked on board the *Amie Ann* at New Bedford, and procured during the whaling expedition from the 24th of June 1869 to October 1871, do you think that the articles mentioned therein are sufficient for a crew of 26 or 27 persons during the time mentioned?

Mr Newton objects to the question being put.

His Honor allowed the question to be put, reserving the objection.

Witness answers: I should think that list of provisions would last that length of time. Wha-

lers do not consume more provisions for the same number of men and the same length of time. I do not know why my name is mentioned in the letter of the 31st of January 1871 in the *Commercial Gazette* purporting to be signed Henry Williams. I have done nothing against the men of the *Amie Ann*.

Cross-examined by Mr Newton: I do not correspond with John W. Pierce at New Bedford. I do not think I ever received a letter from him. He is a cooper and he frequently comes on board of ships at New Bedford, and writes; notes the number of casks, that is why I know his handwriting. I have seen a good many but I cannot say how many. A whaler's crew of 26 or 27 men will eat between 600 or 700 lbs of bread a month when they had no tarro (a kind of yam) or potatoes. I cannot say what quantity of bread they would consume if they had besides 50 bushels of potatoes. I sometimes take the whole of my bread at New Bedford on starting on a whaling expedition, sometimes I have some sent to me. I had for 40 months bread when I left the United States. It is not then so good as fresh. I have had it sometimes wormy and musty that is in some of the casks. On board whaling-vessels we give meat three times a day, that is beef or pork (salt meat). A crew of 26 or 27 men would consume 30 or 40 lbs. of salt meat per day if they have nothing else. I made a mistake the other day when I stated that the Bill of Lading for the oil was for New Bedford. I can give no information about the manifest attached to the Bill of Lading, it was given to me this morning by Mr. Robinson at Houdlett & Co.'s office. The bills of lading were sent home by the December Mail. I am not positive. I cant give any precise information as to when the bills of lading were sent home. Mr Robinson sent the bills of lading home not I.

The case is postponed to Tuesday next the 2nd July, and the manifest and bill of lading and two papers attached thereto produced this day by captain Hazard are on the motion of Mr Newton ordered to be filed.

After another postponement to the 3rd of July the case was taken on the 9th July 1872.

Before His Honor the Chief Judge, sitting in Chambers.

Gustavus Dunham Smith a defendants' witness a seaman, formerly third officer on board the 'Amie Ann' sworn and examined by Mr Newton: I am about to leave the colony. On the 24th July 1869 I shipped on board the 'Amie Ann.' That day we sailed from New Bedford. The first place we called at after leaving New Bedford was Floris, one of the Western Islands. It was about 4 or 5 months after we left New Bedford. Every thing went on well up to that time. We stopped at Floris to get potatoes and onions. A boat was sent on shore about 3 P.M. to take some men on board at dark, to get paid for potatoes and onions. I mean the sellers of the articles we had bought. After they came on board some tobacco and paint were sent on shore as payment for the articles. In the morning I went on shore to show them where to land. Denis



Shay went after me in the boat that carried tobacco and paint. Denis Shay left the ship's board at 11 p.m. I was then on board and on deck, when the boat returned. Macomber came along with Denis Shay. Macomber when the boat was hoisted went forward and asked Denis Shay what he left boat for. I don't know that Denis Shay had left the boat, not having been on shore with him. Before Dennis Shay could make any answer captain Peirce stepped forward and knocked Denis Shay's face against the fore castle. This blow started blood from his nose. His nose bled very bad. The Capt. then ordered Denis Shay to get up and go aft and as he was going aft he kicked him. After this Capt. Peirce bruised Denis Shay's face when he got to the wheel. He struck him with his fists and kicked him. He knocked him down and knocked his head under the spokes of the wheel and then he jammed the spokes of the wheel against Dennis Shay's head and bruised it very badly. This I swear. Denis Shay got out of this and said: Don't kill me. He laid his hand on the taffrail and said that he might as well die one way or the other. He wanted to jump overboard. The 2nd officer C. C. Pierce caught hold of him and prevented him from jumping overboard. That officer has left the colony since about three months. There were after that, marks of violence over the eyes of Denis Shay. After this the whole of the crew more or less encountered bad treatment from the Captain. I received no bad treatment myself from him. The cook Henry William was struck a good many times by the Captain but I cannot say how many times. I was at the mast head one day looking out for whales when I heard a noise on deck. I came down and I saw the Captain having hold of the hair of the cook's head and striking his head against the shifting board. I swear to this. The cook bled somewhat and his face was cut a little. I can't say having seen the Captain strike the cook in any other way. I have heard the cook complaining several times of having been struck by the Captain. I understood the Captain found fault with him for using too much wood and water. I have heard the Captain threatening to knock our brains out. The Captain's child went forward and the sailors taught him to swear. The crew seem to be afraid of him. We were eleven months out before we had any liberty, that was from the time when we first started up to May next year and yet we called in the intervals at Tristan D'acuhna. We had 8 or 10 of the crew ill with the scurvy. We were off Port Dauphin on the South End of Madagascar when they got ill with scurvy. I was not one of them myself. The cause was insufficiency of fresh food. The Captain started for Mauritius, the men got so bad that he was obliged to go to Rodrigues. The weather was sometimes pretty good and sometimes bad. I don't remember the month we reached Rodrigues. I received orders from captain Peirce to get my boat ready to carry the men on shore and to be careful not let them get wet. The object of the captain on sending them on shore was to cure them from scurvy. When we got on shore we stripped them of their drawers and put them in the sand in a sitting posture up to the flanks. Three of them were very bad and three were not so bad. I kept them in

the sand about three hours. This was in the forenoon in broad day light. I know where Raffau's shop is at Rodrigues. The burying took place at about  $2\frac{1}{2}$  miles from Raffau's shop. We went straight on shore and did not call at the village. When we went back to the ship, we went straight to her. The Captain, his wife and child had come on shore. The Captain received orders from Mr Jenner to the effect that it was customary to land at the landing place before landing elsewhere. I don't think it was possible for any one in Raffau's shop to see the burying in the sand. All this was done under my own eyes. I swear to it. I have seen that remedy of burying in the sand for curing scurvy used very often with success. The operation causes a good deal of pain. I believe the men were better for this at least some of them. None of them got properly cured. Besides the 8 men the other of the crew complained of their bones aiking. I know symptoms of scurvy. The gums swell and turn black, it causes your teeth to be loose. Your legs will swell and become black with spots. These are the signs I know. These are the signs I noticed on these men. The captain knew the men had the scurvy, because the captain used the word scurvy when speaking to me, yet the captain told to the men they had only Rheumatism. When we left New Bedford, the food consisted of a quarter of fresh beef, the same as all ships have, going out of New Bedford. That lasted about 2 days, long enough to get the salt beef out, it was not very good. It was eatable but I have seen better. We had potatoes when we came out from home. We had dry bread. I don't recollect about vegetables. The bread was very good for 4 or 5 months after we left New Bedford, then it became full of worms and weavils. This was some time before the scurvy broke out. We stopped at Tristan D'acuhna we got 5 sheep and 5 ducks. This sufficed for a few days. We were 20 in number on board. When these fresh provisions were exhausted we felt on salt beef and bread and flour. We had coffee in the morning and tea at night. We got no fresh provisions until we reached Mahé at Seychelles. At Mahé, we got some green turtle and half a hog. We took no fresh provisions there. After leaving Mahé we fell back on the ship's stores. From Mahé we went to Bird Island one of the group, where we got two barrels of eggs and two bushels of Indian corn. From there we went to Denis Island where we got one or two hogs. The men killed a lot of wild hens. After that we went to Johanna when we got fresh provision. We took there some tarro and some sweet potatoes. These provisions did not last long. The first time we went to Johanna we had all the fresh beef we wanted while laying there and the second time we took a bullock, after going to sea we killed it, two or three days after. I messed myself with the Captain and Officers. The coffee used by us was better than that given to the crew. The tea was always the same. The men grumbled about the provisions. They said that they did not get enough provisions and that what they got was not good. I don't think that the men had suffi-



cient fresh provisions or as much as they might have had. Molasses were given the men but it was more like vinegar. It tasted more like vinegar, and was much thinner than ordinary molasses. As to the codfish I got orders to hoist up a barrel from the hold. The barrel was full of maggots and we threw it over board. The hams were very decent. The crews had none of them. They were reserved for the officers. The crew had no butter. They got no cheese. They had no sugar. They got no sugar for their tea or coffee. Molasses were given to them instead. The crew got no chocolate and had no dried apples, nor currents, nor preserved meats. I don't remember having seen any hen on board after leaving New Bedford. Ginger was used for making beer. The crew had oranges at Johanna. The captain had a little lime juice for himself, the crew had none. The captain got some lemons at Mahé and took the juice out of them for himself. The crew had no lime juice except those that had scurvy. The men had always proper vinegar. While at Rodrigues the Captain ill-treated an old man about 54 years of age. I don't recollect his name he was a German and the cooper on board. On leaving the Court just now Captain Peirce spoke to me during the adjournment and told me: Young man you will go to the gallows and outside the gate, he told me: You are a little tinkling lousy poppy, you can't get off of this Island. You shan't leave.

The case was then postponed to Friday the 12th July.

(To be continued.)

# SUPREME COURT.

Friday, 12th July 1872.

Before His Honor Sir C. F. SHAND Kt.,  
in Chambers.

CONTINUATION OF THE EVIDENCE IN THE CASE OF  
PEIRCE v. CHANNELL AND WIFE.

Examination of G. D. Smith continued: I was one of the officers charged with the getting up of the provisions from the hold of the 'Amie Ann.' I had occasion to see the provisions when they came up and when taken out, and I spoke of them from my personal knowledge. I have seen the log-book of the 'Amie Ann' but I have not read it. I should not be surprised if the entries

of the scurvy were not to be found in the log book, I think the Captain did not want them to be there, I only think so. I never heard the Captain say so. Macomber never told me why he had not put them there. I have been fifteen years at sea, and from my experience of sea, I can say that the provisions were not sufficient in quantity and quality. I remember Mr. Jenner the Magistrate of Rodrigues coming on board the ship. He dined on board. I know of no complaint having been made to him. In Mr. Jenner's presence, as far as I know, no bad feeling was exhibited between the crew and the Captain. I did not wish to shew any ill feeling before a stranger. I remember the *Amie Ann* calling at Denis Island, it was about two months before we arrived at Mauritius. We went there to get some wood and other provisions. We touched on the reef. The shock was not severe. It was when we were fully under weigh Captain Peirce was in charge of the deck when she struck, a piece of the shoeing came up alongside; we began sounding to see how much water there was between her and the reef. We run a kedge anchor out and commenced hauling her a head. She was not aground but only struck, I do not remember anything passing between the crew and the Captain, he threatened to knock our brains out he was put out and in bad humour. The ship did not leak a drop after this, I tried the pumps myself, and from Denis Island to Mauritius she did not leak, the ship went into dock here. The captain stripped her of her copper and some of her sheathing. It was possible to ascertain whether the ship leaked or not after she struck. The fact of her being a whale-ship would no prevent us from ascertaining this. Water was thrown twice a week on the casks to keep them tight. That water was pumped out as soon as we had done wetting the hold. So that water would not have prevented us from ascertaining whether the ship leaked or not. The men when we first came here were hired at one dollar a day. They worked one day, after this the Captain came down and said that they might go and play or find some ship and clear out. I understood by that they were to leave the *Amie Ann* altogether. He did not settle up with us but he gave us an order that was worth nothing. He said that he was going to ship the oil by the *Pioneer*. He offered me five pounds for my share in the oil. I did not hear him say anything to the crew. The £5 did not represent my share in the oil. My share was worth about \$125. The crew were discharged. Captain Peirce gave nothing to the crew. I do not think that many of the crew were entitled to anything on their discharge. They had taken it out in clothing. I think the order was invalid, because it bore that I had been discharged by mutual consent. I did not consent to be discharged by mutual consent. The statement on such order that I was discharged by mutual consent was not true. I could not have made money with it. I was prosecuted before Mr District Magistrate Rouillard by Captain Peirce. He wanted to see if he could not get out of the payment of the two months



of wages. I was discharged on the sixth of December by the American Consul. A few days afterwards the order was handed to me by the American Consul. The American Consul said that the insertion of the words "by mutual consent" was unlawful, and besides the order was not given out in his office. I mentioned these objections myself to the American Consul. I had two orders, in the first the American Consul erased the words "by mutual consent" and in the second I shewed him the order, and he advised me to erase the words "by mutual consent" as they were not lawful. When I received the first order I went with it to Captain Peirce and asked him if he was willing to buy it, he said: no, because the words "by mutual consent" were erased, but he added if I was willing to have another order written in the same way with the words "mutual consent" on it, he would buy it. I told him that I should have my bill, that is the amount in which I was indebted in the ship, put on my order. He said he would put it on. After he put it on I asked him how much he would give me for it. He said he would give me twenty five dollars. I told him I would consider upon the matter, I kept the order with me, I went with the order to Mr Kaiser and asked him if he would lend me a pound upon it. He took the order and said that it was not good for anything, but he would let me have £1 all the same. I had erased the words by "mutual consent" before, at the office of the American Consul. I suppose Mr Kaiser went to see if Captain Peirce would buy the order, and I suppose that it was this the Captain called forgery, and he caused me to be arrested. I considered that at that date three months wages were due to me and that I was entitled to three months wages. I never consented to be discharged. The Captain drove me out of the vessel and from that date I never got any money from the Captain. I was discharged because we were dissatisfied and because the Captain did not want us any more. So that I have been left here penniless, although I have a certain right in that oil. I went to the Consul and made a complaint to him that I was in distress, and he sent me to a house to board and lodge and he assisted the other seamen too. I never heard captain Peirce say that he did not care a dam for the American Consul. I never heard the captain say that he was tired of the whaling business. I heard the captain say that he was going to try and get the vessel condemned, that was on the passage up after the accident. I swear this. I know a letter appeared in the columns of the *Commercial*. I read the letter now shewn to me. I signed it. Henry Williams the cook wrote it and I signed it. (A passage was read to the witness beginning with the words: "It is clear in the minds of many" and ending "New Bedford.") Witness continued: It was an idea that came into my head, the Captain shipped the oil on board the *Pioneer* and stated it was going to Cape Town, he only offered me \$25 for my interest in the oil. That was what made me think that the Captain was to do what is mentioned in the letter. Lord signed the paper shown to me, he is now on board the *Pioneer*. Henry Williams wrote another paper and sent it to the Gazette. I signed

it. He wrote two papers. He wrote one before we came here, that was the one where all the names were signed to it. There was a little alteration on the second from the first. The alteration had reference to the fact of the American Consul's door being broken. In other respects the other statement was the same. I know John Laurence an ordinary seaman on board. He affixed his signature to the first statement and to this one also. Joe Frank signed both statements. Froberg also signed both statements. Lord I am sure signed the first one, I am not sure about the second one. As far as I remember none of the crew left before the 12th of December, some left on board the "Atlantic", captain Croft, some left in the "Herald". The men who went in the "Atlantic" and "Herald" signed the first statement, and the cook Henry Williams told them that he would make a second copy, and they said he might affix their names to it. I myself heard them say this. Emmanuel Marshall or Gomez went off as a stowaway in the "Atlantic". Peckoe and Joe King went in the Herald. Alfred Scott left here and went in a merchant ship. John Scott who gave his evidence before the Master went in one of the bullock ships, he has come back, I have seen Scott down at Mr Rouillard's. He stole 4 geese and 4 turkeys and was sentenced to 3 months' imprisonment. He gave his name as Jenner Nicholas. Antone Kern went away in the Herald. Blue Skin or Frank Gray also went away, I can't say in what ship. I can say that the whole of them signed the first statement except Antone Kern, Kern may have signed it, but I don't know. As regards the others I speak on my personal knowledge. By the whole I mean those whose names appear in the printed publication. Some whose names figure at the end, signed the second as well. I swear that the printed statement contains nothing but the truth. Two men were put in irons outside the Bell Buoy. A policeman and the captain came with the men to the boat, and the captain gave me orders to tell Mr Macomber to put them in irons, they remained in irons five or six days. The Consul sent me a note as the other officers were on shore to release the men and send them to him at once. Théodore Froberg who was one of those in irons got the irons off and escaped. It was through Froberg that the Police was informed. I came twice to Mauritius in May and October. When we arrived here in the month of May there was grumbling on board about the treatment. Levi Butts and George Sprague actually complained to the Consul. The Consul said he could not do any thing, as the ship was beyond the Bell Buoy and he had not the papers. All the time there was more or less grumbling. The second time we came, there was a complaint made to the Consul. We were still outside the Bell Buoy, two or three days after our arrival, when Levi Butts and George Sprague left the ship and went to complain to the Consul. The whole crew complained more or less after the vessel came into the Dock. The two men who first complained came on shore in the same boat as me, they



asked leave from me to do some private business. I told them not to be too long. They came back about 3<sup>1</sup>/<sub>4</sub>hs of an hour after. I was present at the breaking of the door of the Consul. Captain Peirce was condemned for this.

Cross examined by Mr Pellereau :

I said I signed two letters signed by Henry Williams. The one now shewn in the record is the first, and it is dated the 12th December 1871, I signed it in the American Consul's outer office. I made a practice of going there every day ever since I came ashore from the ship. The letter was read out there, it was satisfactory to all of us, we signed our names to it. I saw some of it written in the outer office of the Consul, it was begun in the Consul's outer office and it was taken away and the rest was written, as I was told, by Henry Williams at the Sailors' Home. He told me so on the next day. I mean the day that it was read out to me at the Consul's outer office. Henry Williams read it out to us all, with the exception of Antone Kern who was not there. The Consul was not present when it was read out to us. He was engaged in his private Office. He was not present when we all affixed our names to it. The Consul did not come into the outer office while I was there. Henry Williams kept the letter. I did not know what he did with it. I did not tell Henry Williams what he was to do with it. I put my name to the letter on the twelfth of December. The second letter was signed two or three weeks after the first. I signed the second letter in the outer office in the same place that I signed the other one. I was not asked to go there for the purpose of signing that letter. I could not say who wrote out the second letter. The second letter was read out to me before I signed it, by Henry Williams. I could not say why a second letter was written out. I could not say if it was sent to America. Some of the men affixed their marks to that second letter and some signed it. I see no crosses to the first one now shewn to me. They all signed the first letter except Antone Kern, that first letter they signed with their names. But Levi Walker, and Joe King put their crosses. We signed in the presence of one another, except Antone Kern who may have signed when I was not there. Two men were put in irons out side of the Bell Buoy in the harbour they were chained to a stanchion. The Consul came on board during the time the men were in irons, but did not know that the men were in irons. It was in the Dock that he came on board. I did not see the Consul go to the fore-castle to talk with the men. It was a policeman that brought the two men to the boat but he did not come on board. I do not know the name or number of the Policeman, he was a white man. It was at a place in town where the Portuguese boarded, called Rope Yarns, that Henry Williams told the man he would make a second copy of the letter and they told him to sign it for them. I was there along with Macomber and Mr Charles Pierce. I used to go there quite often. All the men were there but this Antone Kern. Since the case before Mr Rouillard, the order given to me by the Captain was not restored to me. I think it was deposited with Mr Rouillard. Mr Macomber, myself and

few others brought an action before the Supreme Court against Captain Peirce. Mr Newton was our counsel. That case may have come to an agreement between Captain Peirce and Macomber but not between me and the Captain. I could not say whether the agreement made between Macomber and the Captain was to be the agreement between the Captain and myself; my discharge and that of Macomber and the others who had seen counsel about the law suit were sent at the same time to the Consul. I did not see whether the words 'mutual consent' were on the discharge of Macomber. I know an envelope came, but I did not see the order given to Macomber. The words of the order now shown me were about the same as those of the order I received. The words 'by mutual consent' were put down on my order but they were afterwards erased by me upon the advice of the American Consul. I mean the order given after the case in the Supreme Court. This after I had received my discharge from the American Consul. The amount of my bill as set down by the captain was \$ 245 and some odd cents, and this amount was put on my order in Mr Robinson's office. That amount was for clothing, tobacco and what I had drawn during the voyage. I saw the Surveyors view the bottom of the ship, but I was near enough to hear what was going on. The whole of the bottom was not laid bare, a portion of it only was laid bare, and it does not follow from the state in which I saw her, that she must have leaked. In fact she is lying in the harbour now and has not leaked a drop according to the report that I heard from a Custom House Officer. Some days after the 'Amie Ann' left the Dock I myself came on shore, I remained on board the 'Amie Ann' about five or six days after she left the Dock. I hired a few men from the shore, and with a few men of our crew being Portuguese, we took her into the Dock. I did not hear the Captain say that he was going to get his ship condemned. He never said any thing in my presence either here or at sea about condemning the ship, but Mr Macomber told me that the Captain had said so.

By Mr. Newton :—I am sure that the paper now shewn me containing the statement about the breaking of the American Consul's door was contained in the second letter, and on seeing that statement mentioned in the letter now shewn me, I say that I made a mistake and that it is the second letter.

At  $\frac{1}{2}$  past 2 o'clock the witness feeling sick with fever, by consent of parties the case was then postponed to the 16th and then postponed again to and taken on Wednesday 17th July 1872.

(To be continued.)

#### BAIL COURT.

Wednesday, 21st August 1872.

BEFORE THE HON. J. GORRIE.

In the Supreme Court the case of Peirce v. Channell and Wife could not be taken, on account of Mr. Pellereau being engaged in the Bail Court, it was postponed to to-morrow.



## SUPREME COURT.

Wednesday 17th July 1872.

Before His Honor the Chief Judge in Chambers.

PEIRCE v. CHANNELL AND WIFE.

Cross-examination of G. D. Smith continued by Mr Pellereau :

I could not say how long it took to ship the oil on board the *Pioneer*. It was shipped after the *Amie Ann* left the dock. I saw them putting the oil into the barges from the warehouse. Floris is I believe a dependency of Portugal. I have heard them say that there is a Custom House there. I have seen the Custom House at Santa Cruz. It is a village in the same Island. When Captain Peirce ran the spokes of the wheel on Shay's head I was on the poop, looking right down. The wheel is aft. I was not more than twelve or fifteen feet distant, this was about half past eleven at night. It was a moon light night. Mr Charles C. Pierce was there and Captain Peirce and Shay. A man named Edward Foyle was kicked by the Captain and George Lord was also struck and kicked. I do not know what the men did. I took eight men on shore with the scurvy at Rodrigues : George Sprague, Theodore Froberg, a Portuguese named Francisco, Isaac Miller, the rest of the names I do not recollect, they were Portuguese. No wormy bread was served out aft to the officers. We had bread made on board, it was fair bread. The rest of the crew had wormy bread after the first four or five months. Codfish was not served out to the crew. The meat was some of it more or less bad, it was not bad during the whole time. I could not say during what time it was bad. After it began to get bad there was some good and some bad. I had landed the men when we buried them at Rodrigues before Mr Jenner sent word that it was customary to land at the landing place first. The men were not a second time sent on shore. I have never seen the first letter since I signed it, there must I think be some mistake about the dates. According to my recollection, when I corrected myself the other day, it was at the close of my examination. There had been a recess from a quarter to one to about half past one. I do not remember whether the cross-examination began before or after the recess.

Re-examined by Mr Newton : I had no communication with any person about the two letters before correcting myself. I went into the jail with Mr Ackroyd, the defendants' attorney to see the man known on board the ship as John Scott. I saw him there.

By His Honor the Chief Judge : I had an interest in the 'Amie Ann' as to the result of the voyage. I have been engaged in other whaling vessels before. The feeding on board the 'Amie Ann' was not so good as in other vessels. The less the expense for feeding is, the more profit for those interested I think the treatment of the men on board a whaler is a little easier than that on board ordinary American ships. So far as I know, there is no law fixing the diet on board whaling ships. There is no examination by any Public officer to see how the ships are victualled, as far as I know. I

have had no personal quarrel with Captain Peirce since I left his ship, but I have been dissatisfied with his conduct as I have already stated.

Friday 2nd August 1872.

Before His Honor Sir C. F. Shand Kt. and the Hon. N. G. Bestel in Court.

Douglas Wales, Harbour Master of Port Louis, sworn and examined by Mr Pellereau :—I am the Harbour Master of Port Louis. I survey the American ships that are consigned to Houdlette & Co. I surveyed the American bark *Amie Ann* in conjunction with Captain Barclay. I was requested to make that survey by Mr Robinson and Captain Peirce. We made a report of our survey. The document shown me is the report we made. I swear to the truth of every thing that is mentioned in the said report. I saw the *Amie Ann* in the small Dry Dock. She was certainly not sea worthy in the state I saw her. We sent our report to the agents, I mean both to the Captain and the agents of the ship. The American Consul had nothing to do in the survey. With American ships generally, I believe it is customary that the American Consul do interfere in the survey. The American Consul would not employ me both on account of and after the report I was obliged to make of the ship *Florida*. There was no word of the consul at all with regard to the *Amie Ann*. If the consul had called upon me to act on that occasion, I should not have gone, because the behaviour of the consul in the case of the *Florida* was such that I did not care to have any further correspondence with him whatever. I read in the *Commercial Gazette* of the 31st January last the letter signed by Henry Williams. I think that such a letter may cause prejudice to Captain Peirce in the commercial world. Captain Peirce showed me a list of provisions he purchased at the different places during the expedition.

Question : What is your opinion as to the sufficiency of the provisions on board the *Amie Ann* during her voyage ?

Mr Newton objects on the ground that this is not a scientific question, and therefore the witness cannot be asked his opinion on the matter.

By the Court : I was twenty four years at sea before being Harbour Master.

His Honor the Chief Judge allows the question objected to by Mr. Newton to be put, as the Court considers that a man of experience as Captain Wales can give some useful information on the matter. The Court added to the question the words : Assuming the statement of the provisions the Captain bought on her departure from New Bedford, and the statement of what he bought during the cruise, to be true.

Captain Wales then asked to consider the matter before giving an answer. Meanwhile his examination was suspended and the next witness called for the plaintiff was :

Andrew William Barclay, a merchant, Plaintiff's witness sworn, examined by Mr Pellereau, says : I surveyed the 'Amie Ann' in conjunction with Captain Wales. I was many years at sea as master of merchant ships. The document shown me is the report we made of our survey. I swear to the truth of its contents. We saw the



'Amie Ann' in the Dock. She was certainly not seaworthy in the state we saw her. I swear that the repairs we mentioned in our report were necessary to make her seaworthy. I believe I will be able to say from my experience as a captain, whether the list of provisions shown me contains all the necessary provisions for the voyage of a ship from the United States to Mauritius, being given the number of men on board and the length of time of her voyage.

Captain Barclay's examination was suspended in order to give him time to consider the matter before giving his opinion.

The examination of Captain Wales was then resumed by Mr Pellereau: I have looked over the list of provisions shown me, and I can say that, according to the English scale of victualling, the only articles which appear short were the articles of meat, but vegetables appear plentiful and there are many articles that do not appear in English victualling lists, such as molasses and syrups. Lime juice is used in exceptional cases, with regard to it the quantity mentioned in the list shown me is reasonable, considering the quantity of vegetables procured during the voyage and the number of places at which the ship called. Lime juice is issued only in certain conditions, that is a certain period after the commencement of the voyage and after the men have lived upon salt meat during a certain time; there is in the list the best antiscorbutic article after lime juice, that is vinegar of which there is a large quantity. I wish only to remark, in order to avoid all error, that with such a long list of provisions and such a variety of articles, it would be impossible to say what number of days they could last, unless the scale of rations be given, the weight of the live meat &c. were known. I could not form anything like a definitive conclusion but can only speak approximately. The 'Amie Ann' has left the Dock, she is moored in the harbour. I have not seen her bottom since I have surveyed her.

By the Court: I have not seen her bottom inside since our survey. On that day we could not see her bottom because she had a considerable portion of her cargo on board in casks.

By Mr Pellereau: I have seen her to-day. She is not in shallow water, she is in sufficient water for her to float without taking the ground. If she was stripped of her copper and sheathing and laid bare, she might have still floated for a very long time.

Cross examined by Mr Newton: I never had any difficulties or discussions whatever with the Editor of the *Commercial Gazette*. When I meet with Mr Channell I don't care to be particularly civil with Mr Channell. I don't wish to know more of Mr Channell than I do. I believe Mr Channell's paper has made about me and some parties, some remarks that I consider unfair. Half a dozen times Mr Channell has put in his paper things which he had no right to put, as regards my department and my official duties. The remarks had no reference to any report of mine at the Marine Board. Mr Channell is no friend of mine and he is indifferent to me, he edits a very good commercial newspaper which I read every day. Every thing in the report was written at the

same time. After I had written the report and we had signed it, it struck me that our opinion might be given as to the repairs of the vessel and the probable expenses, a little more fully and clearly, and the N. B. which was added at the foot of our report forms no part of the survey report, it was only an afterthought. In the report proper, we gave a recommendation of such and such repairs to be effected, in the proscript we merely gave an opinion. We made our survey on the 8th of November. The draft report was drawn up by me either on the 14th or the 15th of November. I did not submit the draft report to Mr. Barclay. I sent him the neat copy of the report which he subscribed. After the report was drawn up and finished so far down to the expression "Given under our hands" and that report written fairly in triplicate, it occurred to me that a further expression of our opinion with regard to the repairs would be in the interest of all concerned, the underwriters and every body and not caring to give the clerk the trouble of writing a third copy again, we gave further our opinion in a nota bene. I am under the impression that the nota bene was signed at the same time as the report itself. The nota bene is merely an opinion, it does not add any value to the survey report itself. The report might be just as well without it. It is impossible for me to say for what number of men that list of provisions would be sufficient, without having the scale of rations and the weight of the provisions. I would not commit myself to any opinion with regard to the length of time such stores would last, but the purchase of the articles mentioned in that list at so many different places, and at so many different times proves to me that the captain was careful of the health of his crew. To some extent, I shall say that the quantity of articles purchased in the voyage depends upon the quantity of the stock on board, particularly with the fresh provisions. I have already said that I could not come to any conclusion without the scale of rations and weight. It is just as uncertain whether the provisions were sufficient or whether they were not, upon such data as those before me.

Captain Barclay's examination by Mr Pellereau resumed: It being given that there were 26 persons on board the *Amie Ann* and that the voyage lasted from the 24th of June 1869 to the 28th of October 1871, the provisions contained in the list shown to me would be amply sufficient, provided the beef, pork and flour mentioned on the first page were by barrels and not by pounds, which in my opinion must be a clerical error.

Cross-examined by Mr Newton: A crew of 26 men would consume 320 lbs. of pork or a barrel and a half per month, when I say so I suppose that pork alone would not be eaten during the whole time. The voyage lasted  $2\frac{1}{2}$  years. In my opinion 20 barrels of pork were sufficient for the voyage, inasmuch as the pork was not given to the men when they had fresh provisions on board, the pork would keep good during all the time, if it was good when put on board. I consider that fresh provisions taken during the voyage were sufficient. I would take about half a ton of potatoes, a quarter of beef,



carrots and cabbages and those sorts of things for a crew of 26 men, as long as my salt provisions, flour and bread would last say 6 months. If I was to call at another port I would buy vegetables and whatever fresh provisions, such as mutton and beef &c. that could be procured in that place. Bread can last three years without being damaged, if put in air tight barrels or tanks. I think the list of provisions shown me was quite sufficient without going into calculation, I speak from running my eyes upon it, irrespective of the scale of rations and diet. I cannot give a precise opinion without going into a long calculation. If I were to go into those calculations I might alter my opinion perhaps slightly.

Victor Singery District Clerk of the District Court of Port Louis, sworn: I have been summoned to bring and produce into Court the Record of the trial before the District Magistrate of Port Louis and the Magistrate's notes in the case of the American Consul v. Pierce, and ors.

By consent of parties, it is agreed that Mr. Singery would draw up a copy of the proceedings contained in the Record and would send it to the Court.

Theodore Parker Robinson, merchant in Port Louis, plaintiff's witness sworn: I am a member of the firm Houdlette & Co., merchants of Port Louis, I am the manager of that firm. Houdlette & Co. are agents of the American ship *Amie Ann*. The ship was insured in New Bedford, her cargo was insured in Boston. There is a board of underwriters in both towns. The board is composed of the presidents of the several Marine Insurance Companies. There is a secretary attached to the Board. The board of underwriters at New Bedford is not represented here, they coincide with the Insurance Companies of Boston and New York. The board of underwriters of Boston and New York have agents here, Houdlette & Co. are their agents. I recollect the *Amie Ann* putting in in October last, we were her agents from the first. There was no written report made as to her state, but the Captain said that she had been ashore on Denis Island, and a part of the ship's shoe was lost. As she had been on the reef for some time, a considerable quantity of copper must have been torn off. He did not say any thing else to the best of my recollection. I advised him to take her into the Dock to see what damage she had experienced. He told me that he had put in here for the purpose of ascertaining what damage had been done to the ship, and repairing it. The bark was put into the Dock and Surveyors were appointed by Captain Peirce, they were Captain Wales and Captain Barclay, they made two or three surveys, the first survey was made on the day when the dock was pumped dry. I do not think the surveys were made on consecutive days. I was present at the time they made their surveys, they made a report which they sent to my office. I identify the report they made. The repairs recommended in the survey were not made, because the surveyors recommended us to get the estimate of repairs and we found them too large. We advertized in the paper for money, but none was forthcoming. We tried to procure money by Bottomry bond on the ship and cargo. The advertizement in

the *Commercial Gazette* of the 14th of November last is the one I refer to. No one came forward to lend the money. I wrote to the Board of Underwriters of Boston, New York and Philadelphia concerning the *Amie Ann*. I have pressed copies of those letters.

Mr Newton objects to the production of letters emanating from the witness, as he is no party in the case.

Mr. Pellereau said that he wished to prove that the plaintiff had not tried to deceive the underwriters as alleged in the libel.

The Court overrules the objection taken by Mr. Newton and allows the letters to be produced.

Witness continues: I can swear to the accuracy of those letters. They are dated 16th of November 1871. The letter to the New York board was answered. It is the custom of our office to write every month to the board of underwriters. We never received letters from any board of underwriters of New Bedford. J. W. Peirce of New Bedford is co-owner of the *Amie Ann*. I did not write to him. Captain Peirce did. I know it because he brought the letter to me before it was posted. It was posted along with the letters from our own office. I point out one letter to the Board of Underwriters of Boston, of the 15th of December 1871, at page 74 of my book. I produce another letter signed Tyle dated 12th January 1872 from Boston. I remember the message from E. Wendt coming from the Post after the arrival of the mail and brought by a messenger. The "*Amie Ann*" stayed the first time after her arrival in October, two or three days in the Dock, she was examined during the time, and the surveyors recommended that she should discharge her cargo, in order to be repaired, that was done, she remained in the Dock but afloat, and while she was afloat the cargo was discharged and put in the stores of the Mauritius Dock, it consisted of sperm oil, empty casks and ship's stores. It was about that time that we advertized for the repairs of the ship. When we found that the repairs could be made without instructions from the underwriters, we had her taken from the Dock and moored in the Harbour. The work to be done was so expensive that the Captain did not wish to take either the responsibility of making it or that of getting the ship condemned without communicating with the underwriters. When a ship is in distress she is the property of the underwriters, if she is insured. She was not condemned at that time, she was abandoned I believe on the 14th of December 1871 to the underwriters, but I am not sure of the date. The underwriters returned the ship to the owners in part payment along with certain money paid to clear their obligation. The stowing of the oil on board the *Pioneer* was finished on the 5th of December 1871. The carriage from the Dock to the *Pioneer* may have lasted four or five days. Captain Peirce told me that he would send the oil to the Cape Town to be transhipped there to America. As his agent I transacted his business. I did the needful to procure the bills of lading, they were



made in my office. There was no vessel going to America direct, and there was such a small quantity of oil that it was not worthwhile to charter a vessel to take the oil there. There is a regular line of vessels running between Boston and Cape Town, they take cargoes of all descriptions. Notice of the shipment of the oil to Cape Town was given to J. W. Peirce of New Bedford by captain Peirce. I do not think that Houdlett and Co. mentioned that fact to the underwriters. The goods were to be delivered to G. S. Holmes & Co. of Cape Town. That oil is now on board the *Pioneer*. The *Pioneer* has been detained here by the Consul, and all the crew have been taken away by the Consul, that is the reason why she is here still. I do not know whether the oil has any thing to do with the detaining of the *Pioneer* here. A whaling crew cannot be procured here. The oil is a valuable cargo upon which the interest is lost, and the oil is leaking out every day. I have read the letter of Henry Williams and the observations thereon published in the *Commercial Gazette* of the 31st January 1872. I went to Mr Channell to see about that letter on the same day as the publication. I went to ask him to show me what it was printed from. I saw him and he told me that he had no objection to let me see the letter if it could be found. He said that he generally puts such things in the waste paper basket, and that he would try to find the letter there, and he did find it there. I identify the document marked A, the words "copy exact" at the top have been added since I saw it. As nearly as I can remember it, there is no other change in the document. The signatures I looked at particularly at the time. I recognized Macomber, Smith, Weeks and Herald. I recognized the hand in which nearly all the other signatures are written. Many of them are in the same handwriting. I am satisfied that it is the handwriting of the American Consul. I mention the signature of Joseph Frank, Antone Rodorque, Emmanuel Francis Costor, Emmanuel Gomez as being in the Consul's handwriting; I am very familiar with the Consul's handwriting, I have very frequently seen him write. I asked Mr Channell who brought the paper to his office, he declined to say who brought it, he said that it was sent to him by the men who wrote it. I returned the paper to him and went away. I asked him to secure the paper in order that it did not get lost, he promised to do it. I went to see him a few days after with Captain Peirce. I saw Mr. Channell at that time. We entered his office and asked him to be kind enough to let us see the paper, he refused, he said that if the Captain felt inclined to prosecute him, he might do so. Two or three of the crew had denied having signed the document, they came with us but did not enter

Mr Channell's office. The document was not taken out and shown to these sailors, he declined to have the document shown or given to these sailors. I forget their names but they were two of those who had written to the Editor to repudiate their signatures. The bark *Herald* left the day after the mail in November last. I know A. Kern one of the crew of the *Amie Ann* who left on board the *Herald*. I know the American bark *Atlantic*, she must have left about the end of the same month. I am sure it was towards the end of November. I was charged by the Consul before the District Magistrate Mr Rouillard, with having forced open the door of his office and damaged part of the building, but I was acquitted. I suppose that this phrase beginning with these words "and it is impossible that these captains, etc." referred to the occasion which led to the charge before the District Magistrate. On the arrival of the "*Amie Ann*" in October last, I had no communication with her crew. I saw her crew when I went on board. The mate is the only one to whom I ever spoke. I heard no complaint made of Captain Peirce. Macomber told me that he was too much of a gentleman for a sailor, that is, that he allowed the men to do what they liked, and he was not the Captain on board his own Ship. When I went on board in April. I did not notice the men, it did not strike me that the men had an unhealthy look, but I saw them repeatedly on shore almost every day. On their last arrival also they appeared very healthy. I recollect a lawsuit brought before the Supreme Court by Macomber against the Captain, it was settled out of Court in the shape of orders to be given by the Captain to the men for the share they might be entitled to in the oil, which orders were to be paid in the United States. I saw these orders while they were being made and after they were made. I did not hear the arrangement, but I saw papers similar to the one shown me given to the Plaintiff's Counsel by Mr Ritter attorney on the other side. This was done in open Court.

The case was then postponed to Tuesday 6th August 1872.

To be continued.)

1872



Port Louis, 26th August 1872.

To the Editor of the *Commercial Gazette*.

Sir,

In your issue of this day, there is an error in your report of my evidence in the case of Peirce v. Channell which I shall feel obliged by your correcting. I am made to say that I considered 20 bls of Pork sufficient for a crew of 26 men for 2½ years. It was 40 bls I stated.

I am,

Your obedient servant,

A. W. BARCLAY.

#### SUPREME COURT.

Tuesday 6th August 1872.

Before His Honor the Chief Judge and the Honorable N. G. Bestel in Court.

PEIRCE v. CHANNELL AND WIFE.

The cross-examination by Mr. Newton of Mr. Robinson is continued as follows:—

One or two days elapsed between the surveys by the surveyors. We caused the *Amie Ann* to go out of the Dock before we got the surveyors' report, it was upon their recommendation. After recommending the vessel to be discharged they recommended that we should call for tenders for the repairs. The Surveyors suggested that we should call for tenders in order to find out what would be the cost of the repairs the surveyors suggested. They had found out that the vessel should be stripped of her metal sheathing, of her wooden sheathing and of the cement, a shoe or false keel was to be replaced. After the *Amie Ann* had been discharged she was obliged to put into the Dock. Before the report was sent in she went into the Dock. I cannot remember whether the *Amie Ann* went out of the Dock before or after the report was sent in. I cannot say how long the *Amie Ann* remained in the Dock the second time. We called for tenders publicly by means of advertizements in the *Commercial Gazette*, I mean advertizements for tenders for repairs. If we did call for tenders the advertizement must exist. It is so long ago that I do not recollect. Whether we called publicly for tenders for repairs or not, at all events there was but one party in Mauritius that could perform the repairs, that is the United Dry Docks who were then in possession of all the Docks, we got estimates from Mr de Courson. The estimates must have been sent in near the time the report was, for they were sent on by the same mail. It was after we had advertized for the bond that we received the estimate for the repairs. It is so long ago that it is difficult to remember dates. We did not advertize for any special sum but we advertized for about \$9000. It is usual in certain circum-

stances, when it is doubtful whether the ship can be repaired or not, to advertized without knowing what the repairs will cost. This is the practice. The surveyors recommended us what to do and we know ourselves about what the repairs would cost. I have a copy of those estimates. I have not got a copy here. I could produce it. We must have followed the usual practice with regard to the tenders for the repairs. (Mr Newton called the attention of the witness to a letter of the 16th November 1871). Witness says: What is in the letter is correct. We must have advertized for money to make the repairs after we had obtained estimates for those repairs. The copper that is stripped from the ship's bottom is to be sold and credited to the ship and deducted from the expense of the repairs. This accounts for the difference in the amount called for and the amount mentioned in my letter. The contractors have nothing to do with selling this copper. The copper of the ship was not in my estimation worth \$1000, it was worth only \$300 or 400. In advertizing for tenders for money it was always allowable to add or deduct ten per cent. That is if A offers to lend \$10,000 and the repairs amount to \$11,000 he is bound to lend the \$11,000. I thought it was best in this case to ask for \$9,000. It is not what is done in every case. As a rule the vessel is generally repaired and all the bills sent in before the tenders are called for. This was an exceptional case because the vessel was not repaired, so I did not follow the usual course. I did not know at the time when I caused the advertizement for the loan to be put in the papers, that the vessel would not be repaired. We advertized for the loan to see if we could get the money to repair and at what rate. As a rule it is necessary to call for tenders for money before we can ascertain whether the ship is worth repairing or not, it is generally very apparent whether the ship can be repaired or not, and then tenders for loans are called for after the repairs are completed, but when it is doubtful these tenders are called first. Then on the 13th November it was already doubtful whether the ship ought to be repaired or not, on account of the costs of the repairs, it was doubtful whether she ought to be repaired or not. Even when the conscientious opinion of the Captain is that it is doubtful whether the ship can be repaired or not, he ought to call for tenders. As a rule it is the custom to publish the advertisement for tenders for loans in only one paper. This has always been our custom in every case. We never employ a broker to see if money can be had. We only publish a notice, and if tenders are sent, well and good, if tenders are not sent we conclude that money is not to be had. I heard from Captain Peirce that no offers had been made, so far as I know he was told so by the American Consul. Generally there is a certain time allowed for receiving tenders, two hours is quite long enough. This is generally stated in the advertizement. It is my rule and practice to do so. I drew out the advertisement myself. I paid no particular attention to the way in which I drew it. If tenders had been sent in next day, I should have been glad to receive them. I do not mean to say that I did not consider it as a serious matter. I cannot



look at it in any other light than that it was a serious case, it was not a sham advertizement we really wanted the money. I swear that I have no positive idea that the ship was to be condemned, it was doubtful. I knew that the repairs were heavy, but how the owners would look upon it I did not know. After the Captain was acquainted with the amount required for the repairs, he was doubtful if the ship could be repaired. The Captain did not wish to abandon it then as far I know. The Captain never told me then that he wished to abandon his ship. On the contrary he wished to repair her and came in for that purpose. It would have suited his convenience more if he could have repaired his ship. I cannot say whether it was after or before the advertizement that the captain did not wish to abandon his ship. I say now that the captain did not, after the publication of the notice, wish to abandon his ship. I say this because I never knew the time when the captain wished to abandon his ship. I had conversation with the captain regarding the abandonment of his ship. We came to the conclusion that it was best to write home and advise with the owners and underwriters. We must in that conversation have touched upon the expediency or in expediency of an abandonment. It was a subject of conversation for some time, and I think it was before the date of the advertizement that we came to the conclusion that it was best to leave matters in abeyance, until we could hear from the underwriters and owners. I swear that in his conversations with me on the matter the Captain shewed rather his desire to have his ship repaired. I mean by that, the Captain was anxious to continue on his voyage, and I swear that he did not express in his conversations a desire or wish to abandon his ship. This being so I should not be at all surprised if I was shewn a document emanating from Captain Peirce stating his wish to abandon his ship. I have seen a copy of such document in the handwriting of the Consul. A short time ago I said that although the Captain might wish to proceed on his voyage, and repair his ship, from the circumstances of the case that is the impossibility of repairs from the high cost of such repairs, it might be in his interest and that of all concerned, as well as the underwriters, to abandon the ship. The Captain was not under the impression that the only course left to him was to abandon the ship. That I am ready to swear. He was to write to the owners to know what he ought to do, and that was, after the publication of the advertizement, the resolution to which he came after mature consideration. I am not sure at what exact date he came to such resolution. At the time the notice was sent to the paper the Captain was not under the impression that the only course left open to him was to abandon his ship. I would not be surprised on being shown the document in which Captain Peirce says so, I have seen such letter, it was written in the afternoon of the 14th November 1871. There was a letter written by the Captain, it was taken to the office of the United States' Consul. The Consul found it was not worded in a proper manner and the Consul interlined the letter as it should

be written. This of course was told me, as I was not present at the Consul's office at the time. I saw it after it had been done. I have got that copy in my office. The Captain copied that letter in his own handwriting and sent it to the Consul, so I was told by the Captain. He either did it himself or had one made, I am not sure, but he signed it. The Captain told me he sent the letter of the 14th of November 1871. The abandonment of the ship must be made to the underwriters, and it would take four months before receiving their reply whether they accepted the abandonment or not. The Captain did actually abandon the vessel at that date 14th November 1871, but did not sell the vessel, wishing first to hear from the owners and underwriters in order to get their acceptance of the Captain's abandonment, and the right to sell or their refusal with their authority to make the repairs. The Captain wished to repair the ship, but he had no authority to do it. In order to get that authority he abandoned the ship and waited for advices from the owners and underwriters. The abandonment was made here as a matter of form to be accepted or refused by the underwriters, and this abandonment was made to the greatest interest of all concerned, it saved a great deal of expense to the ship during the time that he was obliged to wait here for the reply of the underwriters and the owners. The Consul did not give the Captain the act of abandonment he required. If the Consul had given the act of abandonment to the Captain, this latter would have had the power to sell the ship, it being abandoned. If the Consul would have made an act of abandonment for him he would have sold his ship, but he would not have been able to give a bill of sale. It was not on account of the Consul's refusal to give the act of abandonment that we wrote home for instructions, we did not expect an act of abandonment at the time, because there was plenty of time before the affairs of the ship could be settled, to get the act of abandonment from the Consul. The Captain did not bring me back the letter he had written to the American Consul about the abandonment on the same day he wrote it. The *Amie Ann* was abandoned to the underwriters from the moment the money tendered for was not forthcoming. I was not present when the Captain was examined in the case against Macomber, I was out of Court being a witness in the case. The crew after the vessel is abandoned must be discharged, as of right both on the part of the crew, and on the part of the Captain. That right accrued to the crew from the moment the Captain abandoned the ship, that is from the 14th November. The Captain told me he would ship his oil to the Cape, he told me that after the arrival of the *Pioneer*, it was some time after the arrival of the *Pioneer* that Captain Peirce made arrangements with the Captain of the *Pioneer* to take the oil to the Cape. There is a line of vessels which travels between the Cape of Good Hope and Boston, that is advertized in the newspapers, I think we have a New Bedford news paper here, which contains the advertizement. The Captain gave notice to the owners of the ship of his intention to ship the oil on board the



*Pioneer*, after the oil had been shipped, at least after the arrangements had taken place between Captain Pierce and the Captain of the *Pioneer*. The letter to Holmes & Co., of Cape Town was written some time after the lawsuit between captain Peirce and Macomber. The bills of lading are dated the 30th of December 1871. I don't think that a letter was prepared at the same time as the bills of lading because there was no vessel going at that time. The bills of lading were prepared because we thought the '*Pioneer*' would go. We wait until the last moment before writing the letter in order to give the most recent intelligence. The manifest was made perhaps a month or two months after the bills of lading, it must have been made out on the 28th of March last. The Bills of lading were made out as a receipt for the oil received on board the '*Pioneer*,' the manifest was not made out at that time, as we did not expect the vessel to sail on the 30th of December. Sometime before the 28th of March, a copy of the manifest was sent to the American Consul, but it was returned in order that it should be accompanied with the certificate of the Custom House, and there was some alteration to be made in the form of the manifest, it was not according to the Consul's form. I remember writing the letter dated the 9th December 1871 addressed to the American Consul. The captain told me what the circumstance mentioned in the letter was. While he was lying off and on at Floris, he sent his boat on shore containing one man named Denis Shay, he tried to run away after arriving on shore. The mate caught him and put him in the boat and took him on board. If I remember right, the mate struck him or shook him on shore. After arriving on board the Captain heard some disturbance forward among the men, he went forward and saw the mate pounding Denis Shay, he told the mate to let the man alone, and that he would take care of him, he sent the man to the wheel, afterwards. The Captain went aft himself, and went to Denis Shay and asked him why he wanted to run away, he gave him some good advice verbally as regards his duty. These facts are not to my personal knowledge, I was told so by the Captain. The Captain wrote twice to the Consul in order to have the matter tried before him, and not before a Magistrate. I made a mistake as regards the handwriting of Weeks which I spoke of in my examination in chief, I say now that I do not know his signature. There is a peculiarity about every man's handwriting which leads to its being recognized, it is why I say that I recognize the handwriting of the Consul in the signatures on the letter. I am sure those I mentioned are in the handwriting of the American Consul, except Weeks. I am not on good terms with the American Consul but he said he was on good terms with me. We fell out about two years ago.

Re-examined by Mr. Pellereau : We fell out because I was unwilling to pay him a brokerage

which he was not entitled to receive. He wished me to make the ship pay him  $\frac{1}{2}$  o/o brokerage on bottomry bond sold at his office. I had paid  $\frac{1}{2}$  o/o brokerage to a broker, and therefore I did not wish to pay him another brokerage, that was the cause why we fell out. I did not think he was entitled to that brokerage, that was the reason I did not pay it to him. I consider that the abandonment was only an offer of abandonment, that was our intention. The American Consul received the letter but said nothing about it, we followed this course in this instance, which had been followed in previous cases. After the letter of abandonment has been written, the Captain is to look after the ship, the Consul does not take possession of the ship. The crew have a right to be discharged, after a letter of abandonment similar to the one shown me has been sent to the Consul. That letter was in fact an act of abandonment. They only took away one plank of the sheathing which has not been replaced, and pitch has been put upon that part, the cement also has not been replaced, that part also has been covered with pitch which is quite sufficient to keep the vessel safe.

To be continued.)

#### SUPREME COURT.

Thursday, 8th August 1872.

Before His Honor the Chief Judge and the Honorable N. G. Bestel in Court.

PEIRCE v. CHANNELL AND WIFE.

After some discussion about whether Colonel Pike, who the plaintiff wished should produce certain documents, ought to be sworn or not, Mr. Pellereau stated that he renounced his intention to call that gentleman as a witness, and he put in the examination *de bene esse* of some witnesses before the Master, and stated that he had closed his case.

Mr. Newton then called the witnesses for the defendants.

The first examined was the Hon. Augustus Chateaufort, Acting Collector of Customs, who being sworn stated as follows :—

I am acting Collector of Customs. I know Captain Peirce of the American whaler *Amie Ann*. I had occasion in my public capacity to enquire into a case of copper in which Captain Peirce was concerned. Captain Peirce had picked in Tromlin Island, an island which is between Mauritius and the Seychelles group, about 150 lbs. of copper which he failed to declare in his manifest on his arrival to Mauritius, thereby rendering himself liable to a penalty of £50, under Art. 10 of Ordinance 8 of 1854, this penalty was reduced by His Excellency the Governor to £5. I declared to Captain Peirce that he had incurred the penalty, he was bound to declare the copper. If the copper had been landed to sell, it would have had to pay duty, the copper was landed and placed along with the copper which came from the bottom of the ship and sold for exportation.

Cross examined by Mr. Pellereau : On the enquiry I made, it was found out that the copper had been sent to the bonded stores mixed up with the other copper. The copper ought to have been landed with a permit, it was landed without a permit, but evidently without intention of fraud. There was a permit given to Captain Peirce for his oil, another for the whaling gear and for his stores, and in those permits the articles were described, but there was no general permit given to him to land every thing,



Francis Channell, one of the defendants, sworn, examined by Mr. Newton stated as follows: I am the Editor of the *Commercial Gazette*. I recollect the letter which appeared in my journal of the 31st of January last. The letter was brought to me by Colonel Pike the American Consul. Unfortunately I do not recollect the date, but it was some time before its publication. When it was brought to me by Colonel Pike, it was in an envelope; it was not sealed. I cannot say whether Colonel Pike came to my office on purpose to bring me the letter, as he had other business at the office; he gave it to me in the course of conversation. We

had no conversation in particular about the letter, he only left it with me; he told me to read it, and that I could afterwards give him my opinion upon it; he meant my opinion as to whether I thought it could be published or not. About ten days afterwards Colonel Pike came to my office and I told him that the facts contained in the letter were very strong; on the second occasion that he came, Colonel Pike had other business at the office. Colonel Pike told me that those facts could be substantiated, and even more, that the persons who signed the letter had sworn affidavits before him to the truth of its contents. We read the letter on that occasion together, and I told him that I had taken upon myself to strike out certain passages in the letter and which related not to the Captain but to some other person. This was done with the knowledge of Colonel Pike; he approved of what I had done. The other person I meant was Mr Robinson. We had some conversation relative to the charge made against the Captain as to the insurers. I do not remember the whole of the conversation, but I recollect Colonel Pike stating that he had refused the abandonment of the ship, because he did not consider that the survey was sufficient to authorize him to do so, and that the Captain replied that he could get the survey strengthened if required. Having conversations of a kindred nature every day with other people, it is difficult for me to recollect every thing, but the impression left on my mind was that there had been something lax in the conduct of the Captain with regard to his ship. Colonel Pike and myself talked a great deal about the treatment of the men and the state they were in at the time. I enquired very closely of Colonel Pike into every one of the statements contained in the letter; from the explanations which were given to me by Colonel Pike, having known him for a long time as a perfect gentleman, there was no doubt left in my own mind as to the truth of those statements. I considered that Colonel Pike was the most competent person to whom I could refer or could apply for information upon such a subject, and besides I knew him to be a gentleman in whom I could have the most perfect confidence. I thought it was a duty on my part even at some risk to take up the subject in my paper, because I consider that a certain number of men who I was convinced had been treated in the way they had described, were entitled to be protected in some way or other, and from all I could hear from Colonel Pike there was some obstacle to their obtaining justice from the Courts of the colony. I consider it was a matter of public concern. When a certain number of men are injured or cruelly treated in any way the Press should do all it can for their protection. American whalers especially have sailors of every country, the operation in which they are engaged being adventurous, they have on board adventurous people. I never saw Captain Peirce until he came to my office after the publication of the letter, when he was introduced to me by Mr. Robinson. I did not even know his name. (Document A being shown to witness, he identified it.) Witness continued: The corrections that are to be found in the body of the letter, were made by myself, all of them in ink and also in blue pencil. There was no change made by me in the substance of the letter. I made some alterations in the expressions. I cannot say when the words 'copy exact' were written on the letter. Perhaps it may be explained by the fact that copies were made and sent to the American

Newspapers or they may have been directions to the clerk to make an exact copy. I cannot say in whose handwriting these words are, they are different from the handwriting of the body of the letter, and seem to have been written more recently. I considered this letter both from what the Consul and the men told me as an original. The Consul, before we read the letter together, did not seem to be aware of the contents of the letter, altho' he was apparently acquainted with the facts on which it turned. I do not know the handwriting of the letter. I may observe that it was not alone from the fact of the signatures being appended to that document, that I was led to publish it, but because the statements contained therein had been confirmed by Colonel Pike, and further because he told me that the men by whom it purported to be signed, had made affidavits certifying to the truth of those statements. The letter was thereupon published. It was two or three days after the publication of the letter, that is the 31st of January, that I saw Captain Peirce and Mr. Robinson. Captain Peirce then said nothing, Mr Robinson asked me to give him the letter, I showed it to him and told him that I could not give it to him, because as a rule I did not like to give up a document confided to me for publication, but I told him that I should readily publish anything from himself or the Captain in reply to the letter, and the observations that I had written. To this they said neither yes or no and they left me. I never saw them again in my office. Some time afterwards in the issue of the 2nd of February, I published letters from four of the sailors on board, signed with a cross, declaring that they had not signed the letter published. On the 6th of February I received a declaration made before the American Consul in which one of the sailors who signed with his cross, declared in presence of witnesses that he had been led to sign the document with his cross, as it would obtain him a settlement for the voyage, and that he did not know its contents. I published those different communications. The first communication I received was published in the issue of the 2nd of February and the second in the issue of the 6th. Several of the men of the crew of the 'Amie Ann' came to my office at two different times, they were all in a pitiful state with one exception, that is the first mate. They came at two different times after the publication of the letter which had been communicated to them; they confirmed the accuracy of the statements contained in the letter, they showed me sores on their body, sores which had the appearance of being scorbutic as far as I could judge. There were three of them with sores. Out of the three was one whose sores were partly healed but the traces of which were still evident. I am sure that those men belonged to the crew of the *Amie Ann*, they told me their names; the details which I had from their mouths of the conduct of the Captain on board and of their voyage, left no doubt in my mind that they belonged to the crew of the *Amie Ann*. I knew Macomber the Chief Officer of the *Amie Ann*. I was not present when he was examined de bene esse before the Master. The first officer was a stout man and the second officer was thin. The 1st and 2nd officers came to me. I know that they were the first and second officers of the *Amie Ann* because they told me so. I know that there was a day fixed for their examination before the Master of the Supreme Court. I saw them in the Court Yard on the day of their examination. I have no doubt in my mind, that they were the officers of the vessel from the information they gave me of the Captain, the crew and the voyage. I have brought with me the *Commercial Gazette* of the 6th of February. As regards my observations about the letter, the subject matter of the present suit, Colonel Pike told me more that had come to his notice; he considered the conduct of Captain Peirce as inhuman during the whole voyage. As regards the assault, I derived my information partly from a report which was published in my own paper and partly from Colonel Pike, and as regards the smuggling, from what Colonel Pike told me. The report of the Marine Court published in my issue of the December 1871 and now shewn me, is the one I alluded to; the report of the proceedings of



the case of smuggling have not been contradicted. I am well acquainted with Colonel Pike's handwriting. I have had an opportunity of seeing it very often. I do not recognize the handwriting of Colonel Pike in the signature of José Frank affixed to the letter shown me. None of these signatures resemble, in my opinion, Colonel Pike's handwriting. The signature of Antoine Rodorque, as far as I can judge, does not resemble the handwriting of Colonel Pike. The signature of Emmanuel Francis Costor differs entirely from the other two I have just spoken of,

and does not resemble Colonel Pike's handwriting. Emmanuel Gomez's signature appears to have been written in the same handwriting as Emmanuel Francis Costor, that is not in my opinion the handwriting of Col. Pike. When Mr Robinson accompanied with Captain Peirce called on me after the publication of the letter, Mr Robinson asked me to disclose the name of the party who brought the letter to me, and I told him it was Colonel Pike. It is the invariable custom for me to report in the *Commercial Gazette* the arrival of the ships day by day. The reports are made by the Captain to an officer sent on board and I receive the reports from that officer. The report of the arrival of the *Amie Ann* in the issue of the *Commercial Gazette* of the 30th of October last year under the heading Arrivals: Bark *Amie Ann* of 220 tons, Peirce master, from Seychelles, 20th July, with oil, bound whaling, put in for letters and provisions; Houdlette & Co. agents — is correct as it comes from an official source, and the proof that it comes from the Captain himself is that the names of his agents are therein given and that he alone can know the names of his agents when he arrives. This is the invariable way we receive the information concerning arrivals of ships. I am neither on good or on bad terms with Captain Wales. I have had occasion to make some remarks in my paper upon Captain Wales as a public man, those remarks might not have been palatable to him, but I have no ill-feeling towards him. The notice about the loan of \$9000 to be secured by bottomry bond was published in the issue of the *Commercial Gazette* of the 14th of November. Supposing it was the first time that it appeared it would be prejudicial to the owners or the insurers if the advertisement only appeared on the same day that the demand was made for the loan. Very often a bottomry bond is taken by two or three persons on account of the risk to which such loans are exposed, and some time is usually required by the broker to get the parties to agree, and even to get one party to consent to such a transaction. Our paper is sent at night to the Post office for our country subscribers and in town sent round early in the morning by ourselves. It is not the practice to send to the paper an advertisement for a loan on bottomry bond to be published only once and this on the very day on which the tenders are to be received. According to my experience those who propose to tender must appear at the precise hour. It is usual to adjudge bottomry bonds at the fixed time, but when only one party appears to make offers there is nothing to prevent new tenders to be called by new advertisements. In my opinion if an offer came even a half an hour after the fixed time, it would be the duty of the merchant to take a note of the offer and to put new advertisements for fresh tenders. This strictness is required as the interests of third and absent parties are concerned. It is the duty of the agent to be present at the place where the tenders are to be received, because he knows the exchange market and receives a commission; it is also the duty of the Captain to be present. I have looked with care at several other advertisements calling for tenders for bottomry bond, and I may say with certainty that as a rule advertisements are published two or three days before that on which the tenders are to be received.

Cross-examined by Mr Pellereau: I did not see any man of the *Amie Ann* previous to the publication of the 31st of January, nor any of the officers of the *Amie Ann*. I first saw officers

and men of the *Amie Ann* two or three days afterwards. I cannot now tell the names of all those I saw, but I can tell some. I recollect the name of Macomber because I have heard it mentioned here just now, and it came back to my recollection. There were several of the crew but I do not recollect their names or number. I did not send for them. I enquired from them the truth of the statements in the letter, and from what they told me, I saw they were men of the '*Amie Ann*.' Col. Pike was not there when they came on any occasion. They came as far as I could understand, on their own accord, having heard their letter had appeared or seen it printed. I acquired the knowledge of Col. Pike's handwriting from having seen it very often from his correspondence with me and his contributions to my paper, and specially from the narrative of his voyage to Seychelles which was all in his handwriting and which I read before it was published. Colonel Pike gave me the letter of Henry Williams first to read and to give my opinion upon it and to publish it if I thought proper. It was by my own deliberate decision that I published it, and it was not Colonel Pike who caused me to publish it. I did not apply to get any information from Captain Peirce because I did not expect that with such a letter as that I should get any information from him. Colonel Pike told me that a copy of this letter had been sent to America for publication. It was not Colonel Pike that sent me the report on the Marine Court case. I swear to it. I have obtained my experience on bottomry bonds as a merchant before being Editor of a Newspaper, and as Secretary to the Chamber of Commerce. I pretend to no experience of the scurvy, as I have never had it, and I hope I never shall.

The case was then postponed to the 9th August.

Friday, 9th August 1872.

Before the same Judges.

Mr Newton stated that as Mr Channell was not yet in attendance, he begged to have the following witness examined, until Mr Channell arrived. This was ordered to be done.

Frederic William Bloore, clerk to the District Magistrate of Port Louis, sworn, states as follows:

I have been summoned to produce the Record and the proceedings of the trial in the case of *Hay v. Peirce*. I took down the evidence in that case. There are besides the Magistrate's notes. I have brought both the evidence and the notes of the Magistrate. Captain Peirce who is in Court is the very same Captain who was defendant in the District Court.

Mr Channell's cross-examination was then continued by Mr Pellereau: There may have been advertisements for tenders of money on bottomry bonds made on the same day that the tenders were to be sent in, this is exceptional. There is one advertisement from Blyth Brothers & Co in the *Commercial Gazette* of the 4th of June last. I don't know whether the advertisement appeared the day before. I see an advertisement of Blyth Brothers & Co. about the ship *Chadera* in the *Commercial Gazette* of the 10th of June last, but this has nothing to do with bottomry bond. There is a difference because in the latter case you pledge the vessel, and in the former you do not. It is probable that, if the newspapers were examined, other instances might be found of advertisements like the first abovementioned of Blyth Brothers & Co., but I will rather say it is possible. In my opinion a serious responsibility would be incurred by the merchant, if after the time fixed one tender only was sent in and accepted. I saw some of the affidavits which Colonel Pike referred to in the conversation we had together, I do not recollect the number. It was indifferent to me after the statement of Colonel Pike that the persons had signed the affidavits, to count their number. It was after the publication of the 31st of January that I first saw those affidavits. The affidavit published in the newspaper of the 6th of February was brought to me by two of the witnesses who had signed it, one of whom was an officer. I believe I have still got the letters one of which was published on the 2nd of February, they are all of the same handwriting.



Col. Pike did not tell me where the letter signed by Henry Williams had been written. When I was asked whether I had any experience of the scurvy I said that I had no experience as far as I was concerned, but I now wish to add that I have a common knowledge of that disease as well as of the itch, the fever &c, I have acquired that experience from general information procured in the course of my reading and from communications with professional persons. I had previously

seen people with scurvy, they were sailors; it is a disease which proceeds from want of proper provisions. The symptoms I had seen were sores and ulcers. The difference between scorbutic sores and ulcers, and other sores and ulcers is one which I should have difficulty in recognizing, but the men of the "Amie Ann" coming to me in an emaciated state, and from the description they gave me of privations they had suffered on board, I judged that the sores and ulcers they had were scorbutic. Referring to the publication in the issue of the 6th of February and upon reading it I say that Pierce is one of those who brought it to me. As regards Pierce I am sure because he was one of the officers of the "Amie Ann," with regard to the others I am not sure.

By the Court: The letter was given to me by Colonel Pike, as I mentioned before; it was not sealed up. Colonel Pike told me he had been in repeated communication with the Procureur General and the Magistrate, and that he found difficulty in having the matter adjudicated in the Court. The District Magistrate would not take up the case without the opinion of the Procureur General and the Procureur General would not give his opinion. My impression was that the Magistrate would not take the case because he doubted his jurisdiction but not on account of any unwillingness to administer justice. The Consul on his side complained that his powers from his own Government were too limited.

To be continued.)

#### SUPREME COURT.

Friday, 9th August 1872.

Before His Honor the Chief Judge and the Honorable N. G. Bestel in Court.

PEIRCE v. CHANNELL AND WIFE.

Nicholas Pike, Consul of the United States of America in this colony, sworn: I know Captain Peirce, master of the American ship *Amie Ann*. The *Amie Ann* came twice to this port last year. On the first time she came here I had occasion to go on board, I went once on board then. I think it was about the 27th of May 1871 that she first arrived here. I went then on board on account of a complaint made to me by one of the crew. The complaint I received was made as soon as the arrival of the vessel. One of the complaints was made by a boy named Antone Kern, the other by an old man past 50 named Shultz, a German. There was also a complaint made by Mr Arnott, German Consul, to me on behalf of these men, I mean that he came to me in order to ask the discharge of these men. Shultz was badly bruised. I saw that with my own eyes, there was a severe cut on the cheek and over the eye, he took off his coat, I examined his shoulders and arms and I found that he was badly bruised. That is all I observed. He complained of the Captain knocking him down and abusing him constantly, I think Shultz was cooper and blacksmith on board. He seemed to be a very useful man and seemed to have been formerly in a higher position. Antone Kern informed me that the Captain was constantly knocking him about and that had it not been for Mrs Pierce, he would have killed him. Antone Kern had shipped as a sailor but had been transformed into a nurse, for the child of the Captain, so he informed me. The complaints of the other man were general bad treatment and want of proper food. The ship was laying outside the Bell Buoy at this time, I remonstrated with Captain Pierce and told him, unless he pursued a different course that

when at the arrival of the ship, she was expected back in 14 months, I should thoroughly investigate into the matter and if the charges were found true I should remove the men at once. The Captain admitted to me having struck Shultz and having caused the scar on the cheek, but that he treated Kern well. He gave the reason why he had ill treated Shultz. I asked Captain Pierce: why have you struck that man in such a way, half an inch more you would have struck him on the temple and perhaps killed him? The Captain answered that the man did not understand his business, he was neither a cooper nor a blacksmith, and that he was much disappointed with him and Shultz annoyed him. This was all the reason he gave. He denied having struck the other man Antone Kern and said that he had always treated him well. I deemed it my duty to bring Henry Shultz from the ship and to discharge him. The boy Kern I would have discharged, but he deserted the ship. I assisted Captain Peirce in taking him, and replacing him on board. I know the boy was retaken and sent on board. The ship proceeded to sea next day, as regards the other complaints I took note of them in order to investigate them fully on the return of the *Amie Ann*. She was ready to start and I did not wish to detain her on her voyage. I was however satisfied in my own mind that there was something wrong with the Captain and the crew. The ship left and came back on the 30th October 1871. On the day of his arrival he came to the Consulate and deposited his register and crew list, and at the same time noted his protest. It is a customary thing for all masters to note their protest before the expiration of 24 hours after their arrival. On the following day some of the sailors came to my office, I recollect the names of three who were officers of the ship: Mr. Peirce the second mate, Levi Butts boat-steerer, and Sprague boatsteerer too; there were three others with them whose names I do not recollect. They stated that they wished to make a complaint before me against Captain Peirce. Butts took off his trowsers and showed me his legs, they were very much swollen, and here and there in different parts there were purple spots and scurvy spots, I listened to the story they told me, and being much engaged at that time with other business, I informed them that I would make an investigation after the vessel came into port. The story they told me at the time was general bad treatment, kicks, cuffs and bad food. On the following day I sent a note to the Captain asking him to appear at once in my office; he came; I acquainted the Captain with the charges and he denied them. I then appointed a day to hold a Consular Court not wishing to interfere with the movements of the vessel, I mean her entering the harbour, mooring her and docking her. I did not hold the Court at once and allowed some days, 8 or more to elapse before holding it. Every day some of the crew nearly every one came to my office to bring complaints against the Captain. I was nearly 3 weeks to take depositions of the crew from 10 to 3 in the afternoon almost every day. Captain Peirce came and informed me that Macomber had brought a suit against him in the District Court, I do not recollect the date, but I think it was a short time after the three men whose names I have given made a complaint to me. There was also a complaint made by Captain Peirce against Macomber, I thought the whole affair to be a disgraceful one and called both of them before me and gave them a reprimand. I used every exertions in my power to prevent them going into Court.

(The case was postponed to Tuesday the 13th August, and then to the 15th on which day Colonel Pike was unable to attend as he was engaged as one of the Judges of the Exhibition, the case was then postponed to Tuesday the 20th August.)



Tuesday 20th August 1872.

Before the same Judges.

Examination of Col. Pike continued by Mr Newton: Captain Peirce made a complaint against Macomber, but after I had an interview with them and the attorneys on both sides, the case was settled and the expenses paid by myself. I have never been paid back the amount which I paid for costs. The crew of the *Amie Ann* were bringing complaints against their Captain from day to day before and after the affair I have just spoken of. Those complaints were for ill-treatment, that they had been abused in many different ways and poorly fed. I pursued the ordinary course that I take with regard to those complaints. I took down their depositions. I did every thing in my power to reconcile Captain Peirce with his men. As a general thing, unless the charges are very serious, I endeavour to reconcile the parties who are before me. I was not then aware of all the charges which those men had to bring against the Captain. It was

only when I began to hear all the depositions that I became aware of all the charges. I took those depositions.

Mr Newton wanted to produce the depositions made before the Consul.

Mr Pellereau objected on the ground that depositions of witnesses can only be evidence when they have been given before a Court of Justice, where the witnesses may have been cross-examined, and in the present case the learned counsel contended that as the depositions have been given before the American Consul who did not hold any power from the Court to examine the witnesses, and his client had not then any opportunity of cross-examining them, therefore those depositions are not admissible and can not be allowed to be produced.

Mr Newton replied that his clients had pleaded justification, and they had to show by all legal means that the statements contained in the letter they published are true. The other side had put in as evidence letters written by persons who had nothing to with the case, and surely he was entitled to put in sworn evidence of parties said to have been ill-used by the captain. The depositions might not be evidence of the specific facts, but they were part of the *res geste* as showing that the captain's crew complained of his conduct and the nature of these complaints.

The Court ruled however that the depositions could not be put in.

Examination of Colonel Pike continued by Mr Newton: Very nearly all the crew deposed before me. I recollect a man of the name of Lord, he also deposed before me that he was ill treated, and in my recollection in a worst manner than any other, except Denis Shay. I recollect a man named Froberg, he came not only once but three times to complain. Lord complained to me that he had been very ill treated by the Captain, he having been knocked down and bruised very severely. I am quite sure that almost all the crew came to complain to me. There were 25 or 26 I think on the ship's articles. I am not positive as to the number. When complaints are brought before me I make a note of the complaint, and if I can hear the complainant on the very day I enter the complaint in a book kept for that purpose. I see in a document dated the 28th November 1871 made at the time that the following parties appeared before me: William H. Macomber 1st mate, Charles Pierce second officer, G. D. Smith, George Sprague, Levi H. Butts boat-steerer, Edmund F. Weeks boatsteerer, Henry Williams cook, Denis Shay seaman, Levi F. Walker seaman, H. G. Herron seaman, Theodore Froberg, John Laurence. On the 6th of December William H. Macomber, in fact all those whose names I have just given with the addition of Antone Rodrigues Veeda and Joseph Francis Gomez also appeared before me. I took also the dying testimony of David Gregory. Gregory complained with the rest. His complaint was of the same nature as the others. Gregory is now dead. There are other men also

who complained, I cannot give their names now. When those men first came to me, far from encouraging them I was inclined to disbelieve their statements. I sent for Capt. Peirce, and asked him for explanations about the complaint brought by the men before I investigated it more fully. All the men looked miserable. There was not a man in the whole crew who had not some trace of scurvy, some were in very bad condition through real scurvy with the appearance and symptoms of which I am perfectly familiar. The whole of them did not complain of having suffered of scurvy. Some of the men I attended myself, as I have studied medicine in my younger days, others I did not, Levi Walker's case was so bad that I ordered a medical man to attend him, and I paid the bill for which I have a receipt at my office. The first time that I called Captain Peirce, he listened to me, but afterwards he was angry and said the men were a bad lot and he wished to get rid of them. He even wrote a letter to me in which he asked for the discharge of his men; he himself handed over the letter to me; it was not signed by Captain Peirce. I asked him explanations, he told me that he had a poor hand, and he asked Mr Robinson to write the letter for him and he forgot to sign it. The captain wanted to have some of his men discharged. One point he did not deny when I brought it to his notice, that was that his crew had the scurvy. I asked him why he had buried the men in the sand. His reply was that he had a bad voyage, and you know very well, he said, that when we make a little oil, we cannot give men fresh provisions or ordinary provisions. I do not recollect which of the two expressions he used. I told him I thought he kept the men out too long without giving them liberty. His reply was that entering a port was expensive. I questioned him a good deal about burying the men at Rodrigues, he did not deny that he had not treated those men properly, he said: I am tired of whaling take these men out of the Ship. In fact on the following day that this conversation took place Captain Peirce wrote me a letter, asking me to appear before the Senior District Magistrate of Port-Louis, to defend him in a case that Denis Shay had brought against him for assault, that is choking him in the Dock. (The witness reads in Court four letters whereof two were addressed to him by the Captain, and two were his answers to him; these letters were put in and marked by the Registrar.)

Witness continued: I attended the District Court when that case came on. I had a conversation with Captain Peirce about the case on that day, on the balcony just outside the District Court. He appeared somewhat excited, and he said he only wished he had knocked Denis Shay's brains out, it was before judgment. I had no reason to have any enmity against Captain Peirce. I answered all his calls and treated him like a gentleman, and did all I could to keep him out of difficulties. I am aware that Captain Peirce had on board the *Amie Ann* some whale oil, the produce of his voyage. Whenever goods are transhipped to America the invoice must be brought to me, if it is oil there must be three bills of lading which are brought to me, and I must affix to each of them the Consul's certificate that it is of American catch, otherwise the oil would be subjected to a duty. It is so whenever it is shipped from any foreign port. No matter where the oil is shipped provided it goes to an American port. A ship leaving here with oil to be transhipped at another port for America ought to take a certificate. If she did not take the certificate I would report the case to my Government, and the oil would be liable to be seized, if the custom authorities knew that this oil was not taken by the ship who caught it. I can cite cases. The certificate now shown to me and which is attached to the bill of lading was obtained from me at the request of Houdlette & Co. but it must be borne in mind that this certificate is only one of the genuineness of the signatures of John C. Peirce and Augustus Chateaufort, Collector of Customs. With regard to that oil I am aware that there was some discussion between the Captain and the crew of the '*Amie Ann*.' There was a case brought in this very Court about this matter. I understood from Captain Peirce him-



self that the men had been discharged and settled with by the Court. I told him that such could not be the case, and I made an application to the Registrar for a copy of the decision of the Court. The Captain then informed me that the judgment was final and that the men were discharged. I then told him that he was mistaken, that I alone had the power of discharging and settling with sailors on board of American ships. On the following day I showed him the Judge's decision, but he was not satisfied and left me in a rather angry mood. I advised him to keep quiet and I would use the best of my endeavours to get him out of the difficulty. He gave me a great deal of trouble. Some of the men were discharged by me before they came to the Court. At this time some of the men came to me with written orders that had been given to them by Capt. Peirce, among others Macomber, Peirce and Smith. I would remark that sailors on board American

ships when settling with their Masters bring to me their written orders or agreements for settlement, and it is the universal custom with me to re-write these orders if they are not properly made, in order that sailors might not be cheated. When I first examined these orders, there were I think 6 brought to me, I told Macomber and Peirce the bearers of them that they were good for nothing, and that in my opinion they were not honestly drawn. In the first place an order of this kind given to a whale man should be drawn in a clear manner stating the quantity of oil and whale-bone taken during the voyage, the amount of money or clothing that was advanced to the seaman at the commencement of the voyage, the advances in money and clothing during the voyage, the lay or share to which the seaman is entitled must be specified. After such an order is drawn and given to a sailor, to make it legal and negotiable it is necessary for the master who gives the order to sign it before the Consul, the Consul then attaches his certificate to the order, certifying that the seaman has been honorably discharged by mutual consent and that the statements made in the order are true and correct, and that the signature of the master was made in his presence and is worthy of full faith and credit. Such an order can be sold here at Port Louis or sent home directly. Since 1849 when I entered the service, in every case that has come to my notice orders have been made in the shape which I have already described, and many cases have come under my notice. I am ready to swear that in the American Consulate the practice is to make orders in the way and with the formalities I have above described. (The Consul here refers to the official Regulations in which the form is given.) The witness reads the form of an order as it should be which he produces, and then reads one of the orders given by Captain Peirce in the present case and says speaking of the latter order: This tells its own story. The seamen on board the *Annie Ann*, officers and men had been 30 months out without proper clothes and money and they were very much in need of a few dollars. If this order had been properly drawn up and certified true by me, they could have been negotiated, but it must be observed that the advance made at New Bedford when the ship sailed is not mentioned in the order nor the advances made abroad. It has not my signature and certificate attached to it to make it legal. I think these objections to the order are very serious.

The case was then postponed to Wednesday the 21st August, at 1 P.M., and Mr Pellereau not being engaged on that day before the Bail Court, the case was again postponed to Thursday 22nd August 1872.

(To be continued.)

## SUPREME COURT.

Thursday, 22nd August 1872.

Before His Honor the Chief Judge and the Honorable N. G. Bestel in Court.

PEIRCE v. CHANNELL AND WIFE.

The examination of Colonel Pike continued by Mr Newton.

I believe that the orders that were given by plaintiff were handed to me by one of the sailors of the 'Annie Ann.' They were so handed to me soon after they were received. I think it was on the same day that the sailors got them. I gave them advice with respect to them. I told the sailors the best course to take was to return the orders to the Captain, because they were good for nothing; some of the orders were left in my office where they are still; as regards the others I cannot say what became of them. I have the orders of William H. Macomber and Charles Peirce which I produce as also one to Gregory which I produce to show how an order ought to be drawn. Smith had an order also. Smith had two orders, the first one he brought to me because he was dissatisfied with it. He informed me that Captain Peirce and Mr Robinson recommended him to shew me the order, and if it was not right and I did not approve of it to make alterations or give him a clean form and they could give him one that was satisfactory. I made an alteration erasing the words "mutual consent," and adding on a slip of paper which I attached with a pin to the order, what I thought to be correct; this was done in order that Smith might receive from Captain Peirce an order that he would negotiate, that is make money of. Captain Peirce entered a complaint against Smith; this was some days afterwards. In the mean time a second order was given, the first was torn up, I was informed of this by Smith. The complaint of the Captain was that Smith had forged the order, this was upon the second order which had not passed through my hands. I however saw the second order in Smith's hands; he read it to me and asked my advice as to what he should do. I recommended that it should be returned to Capt Peirce, as it was not properly drawn and not negotiable, good for nothing. I did not recommend that any particular portion of the order be altered. Mr Smith asked me to intercede in the matter, which I did. I called on the Procureur General and as soon as he inquired into the case he released Smith at once. He informed me that Captain Peirce was liable to £50 fine for every order that he had issued. Those orders were not stamped. It was impossible for the sailors to get any thing upon those orders. Some of them tried and failed. The sailors were never discharged by mutual consent. It is impossible that sailors on board American ships should be discharged, in this port, being a foreign port, except before me as Consul, unless sailors have been guilty of some offence against the laws of the colony or been taken out of the ship, for murder for instance, but no discharge can be given except by me. What I state applies as well to those that are not discharged by mutual consent. In case of a sailor having been convicted of any crime here and detained so as not to be able to leave with the ship, I give to the Captain a certificate stating the facts, and when such seaman is released I deal with him as a distressed seaman. That is I supply him with necessaries and send him home. In case of a discharge by mutual consent, the application to obtain the discharge may be made either by the Master or by the seaman, they attend before me. I question them very closely and if I find the consent is mutual I discharge the seaman. Almost in every case, I demand of the master three months extra wages and never discharge a man without this, excepting there is an agreement made between a seaman and the Master specifying the port or ports in which the seaman is to receive his discharge. In such cases when it is by



mutual consent, as I have explained, I invariably take from the Master and the seaman a document stating the terms of the discharge, also a statement from the seaman that he will not be a charge to the Consulate, whether the discharge is by mutual consent or not. The law of the United States requires that the Captain must pay the three months extra wages to the seamen, except when the discharge takes place at the port where according to agreement the voyage has terminated. I can swear that this is the law I must enforce by my duty as American Consul. This law applies to whale ships. The voyage here would have terminated at New Bedford. I must mention that in case of abandonment of a ship, that is in a case of a regular and proper abandonment or shipwreck of a ship and her being sold, the Consul discharges her crew without demanding extra wages. When the seamen of the *Amie Ann* received those orders the vessel was not abandoned. I remember a lawsuit between Macomber and the Captain about the oil. The position he then took was that he had settled with his crew and asked me to discharge them according to the laws of the United States. I can swear to this. I do not think that he then assumed that the voyage was terminated. He did not ask me to discharge the men on the basis that the voyage was terminated and the ship abandoned. He intended quitting whaling and going into the merchant service. The seamen were not discharged by mutual consent, they were removed from the ship by me for cruel and inhuman treatment by the Captain. I removed ten of the crew in November and 16 in December. This was in November. Three of the men Antone Kern, Joe Elvado and Frank Fred were shipped by me in the *Herald* on the 17th of November. I shipped in the Atlantic a vessel that cleared on the 28th November, *Molly Frances*. I swear that there never was any discharge by mutual consent. I required that Captain Peirce should pay the three months extra wages to his seamen who were discharged by me. (Witness reads the copy of a letter dated the sixth of December which he wrote and sent to Captain Peirce.) I swear it was delivered. I wrote similar letters and there were several of them; whenever I discharged other seamen. Those men had not a farthing in their pockets and very few clothes, not a change; most of them were bare footed, I provided them with clothes myself, sent them to the Sailors' Home and other boarding houses; most of them were sick. Some of them remained on board because they wished to get home and they had an idea that the ship was going home. Some of the men complained whilst in the harbour here that they had not sufficient to eat. These complaints were made a num-

ber of times. I sent for Captain Peirce, he did not come, so I wrote him a note he came, he was very much excited and talked wildly and spoke against his crew and denied their charges. I went on board the ship and had an interview with some of the men. I was satisfied that the charges were true and well founded. I was satisfied that all the charges were well founded. I made a minute investigation into all the charges. I examined every man separately. I never had any communication with Captain Hazard about the oil. The Captain wrote to me about the abandonment of his vessel. I produce the letter, it is dated the fourteenth of November. This is the only letter I received from the Captain about the abandonment of the vessel. It was brought to me by the Captain himself. I recognize the handwriting of the note shewn me produced by plaintiff. It is in the handwriting of Mrs Peirce. It was never shewn me and never came into my hands. (Mr Newton reads it and a slip of green paper attached to it.) I never wrote the interpolated lines in the note, my impression is that they are in the handwriting of Mr Robinson, this I cannot swear as the writing appears to be disguised. Had Captain Peirce asked me as his Counsel to write this letter, I would have done it with pleasure at that time. I say that I do not know who wrote the green slip of paper, I think the Captain ought to give me credit for spelling it not for penmanship. I swear that I did not write it. I know nothing about it. The only letter I received from Captain Peirce about the abandonment of his ship was the one I produce. I think that note must have been got up for the purpose. When I received the letter of the fourteenth of November notifying me the Captain's intention of abandoning the ship, I asked him if he had taken the necessary steps to do so. He said that he had, that a survey had been made on the ship and that he and Mr. Robinson had been looking over the survey report and that it was not strong enough. He held a paper in his hand a paper which he said was the report, that he intended to have another survey as he and Mr Robinson were certain that they could not condemn the ship on the survey which they had. He asked me for an act of abandonment, it is a warrant authorizing the abandonment. He then left my office. As far as I can recollect two or three days afterwards he came again. On the 13th of November the Captain asked me to allow him to call for tenders for bottomry at my office, I told him that he could. The advertisements were published in the *Commercial Gazette* on the same day that tenders were to be received, they were to be received at noon. Whenever tenders of such a description are called for, it is a rule that both the agent and the Captain of the vessel must be present at the appointed time. The tenders are to be received by the Captain in person and not by me. At the appointed hour on the 14th the Captain was not there nor his agent. That I am ready to swear to. It struck me very forcibly at the time that something was wrong, and that there was some underhanded work going on, such was my impression. I believe that the money would have been forthcoming if they had been present. Two gentlemen brokers came to my office, I believe Mr Thomy Pitot was one, the other I do not know, they called for the subject of tenders. As to Mr Thomy Pitot I am not sure of the name, but I could identify the gentleman who came if I was to see him. Pitot said: Is Robinson here? or Captain Peirce? I said I was astonished they were not here. He then asked me about the bond, on what conditions it was to be sold. My reply was that I did not sell the bond, and I referred him to Mr Robinson, Captain Peirce's agent. I remained in my office till 4 o'clock in the afternoon thinking some one might come. I saw no one till the 17th of November. The letter dated the 14th was given to me in the morning of the 14th and, before the hour fixed for tenders, and if there is an allusion made to the impossibility which the Captain alleged he met with regard to raising funds on bottomry, it is because the Captain as he himself told me had tried before to raise money on bottomry and had not succeeded.



I called the attention of the Captain, when he gave me the letter, to the fact that on that very day he was to receive tenders according to the advertisement in the paper. I noted down at the time our conversation. All these circumstances contributed to raise suspicion in my mind. I saw no one as I said before until the 17th. On the 17th I saw Captain Peirce, he handed me a survey report signed by Wales and Barclay. I took the report and read it, and remarked that this would not answer the purpose and told him that he would get into serious difficulties. I remonstrated with him on his whole conduct as I began to see through it. It was in my opinion a case of barratry. The report in my opinion was insufficient because in the first place in all the Courts of the United States, the most important document is that of the extended protest. In case of a dispute about marine insurance, the survey report is also sent in, and if the two documents are properly done, there is seldom any doubt or dispute. I wish fully to go into this in order to show the rascality of this case. The protest was carefully drawn by me. The body of this is an exact copy of the Log of the "Amie Ann." On reading this over there is not one word there relating to the ship leaking. In the survey report which is always attached to the extended protest, I find these words: "It appears from the statement of the Master and others that up to the time of stranding, the vessel has been perfectly tight, but that when after striking heavily for some time she was afloat, she proved to be leaky." Those first four lines caused me to think seriously, as I find these surveyors acting not in the light of surveyors, but interrogators of the master and others. Further on I find them acting as appraisers and they say "that the 'Amie Ann' as she now lies in this port in a damaged condition, is not in our opinion worth more than £1.10 a ton." I would further remark that in my opinion after the body of the survey report was drawn and signed, it was taken back to the surveyors on account of its not being "strong enough," using Captain Peirce's own words. According to the nota bene affixed thereto, they state that the repairs recommended are based on the visible injuries of the 'Amie Ann,' and they also state "that as some hours elapsed from the time of her grounding to the time she was afloat, it is not improbable that she has sustained injuries even more serious than those noted." This document is a most foolish document, in my opinion, it conflicts with the extended protest, and in the many survey reports which have passed through my hands, I have never seen one like this. The object of a survey is to ascertain the exact condition of the ship at the time of the survey, to make the report of such condition to the master or agent who ordered such survey, and to recommend what repairs are needed in their opinion, in order to make the ship seaworthy, but we find the surveyors of the 'Amie Ann' acting as appraisers, surveyors and interrogators.

At this stage Mr Léon Pitot, the broker, is brought into Court and Colonel Pike identifies him as the broker he referred to.

Witness continued: The ship was not abandoned till the 23rd of April when I received an act under the hand of Mr J. Mercier, attorney at law, which I produce. I never saw in such a doubtful case as that of the 'Amie Ann' was, judging from the survey report, a captain proceeding with so much haste to abandon his ship. I stated just now that in my opinion it was case of barratry. I explain myself. My first suspicions were from Captain Peirce's words from his own lips. Soon after his arrival here he told me he was tired of whaling, that he wished to get rid of his crew, that he would go in the trading business on the coast of Africa. Upon the witness stating, I further heard from a portion of the crew.....

Mr Pellereau objected as it was hear say.

Answer allowed to be recorded and point reserved.

Witness continued: The sailors told me that in conversation with Captain Peirce he told them that as he had made a bad voyage he intended to condemn the ship if he could, he even went so far as to make arrangement with some of the men in this matter to assist him. When the protest was made out by me in triplicate, the mate Macomber, the mate Pierce and the carpenter of the ship refused to sign it. It is always customary for the master, mate, carpenter and two seamen to sign this extended protest. Captain Peirce told me to offer Macomber \$50 in gold to sign it, he gave me instructions for it, and he told me also to offer to Pierce \$40 and Smith \$30. I remonstrated with him and told him that I would have nothing more to do with his business but will report him to the United States Government, which I did. Letters were drawn up and sent to the board of underwriters by some of the crew themselves stating those facts. After I refused to draw up any more documents for him he became angry and said that Mr Robinson who was agent of the underwriters would do as he wished, and he needed not the Consul's advice. After that he kept away from my office. My suspicions are also based from various letters received from the sailors.

On Mr Newton asking to produce these letters Mr Pellereau objected.

Mr Newton then said he did not insist.

Witness continued:—I also refer to all the facts which I have mentioned in the course of my deposition as grounds of my suspicions. I know Captain Hazard of the bark *Pioneer*. I did not advise him to come in this harbour to ship the oil of the *Amie Ann*. It did not matter to me whether the oil was shipped on board his vessel or not. It was not at all on that account that I discharged his crew. I discharged the whole of his crew. I discharged them on account of most inhuman treatment. Captain Hazard was aware that his crew had brought charges against him and he answered those charges. He admitted many of them, others he denied. George Pierce a boy, one of Captain Hazard's crew, has since died. That boy had been very ill-treated. I said that Captain Hazard was drunk, he fell from his chair and he begged my pardon in my own office. He appeared very much intoxicated, and a carriage was brought to take him. I never spoke to Captain Hazard of what I intended to do with Captain Peirce. I never said to Captain Hazard that I would "ruin Captain Peirce and run him out of every dollar and clear the fellow right out." I am not in the habit of making such remarks. I never said to Captain Hazard that "Captain Peirce was a mean man who wanted to cheat his crew and rob the owners." I spoke kindly of Captain Peirce and treated him as a gentleman up to the time of the commencement of this trial, and even then I treated him politely. I never said to Captain Hazard: "I shall whip you out of your ship as I have done Captain Peirce out of his." I had very little to do with the affair of the oil, I mean the suit brought by the men. Captain Peirce wrote me a letter apprizing me of the fact that a suit had been brought against him in the Supreme Court by his crew, and he requested me to appear and defend him. The letter I have put in as evidence. I do not know personally where the oil is. On the 28th of March I gave bills of lading for the shipment of the oil, that is I gave certificates to the signatures on the bills of lading for the



oil. The men brought the suit, I appeared in Court to defend the captain. I appeared twice, once before His Honor Mr Justice Bestel, I think I produced the articles of the ship 'Amie Ann' and other papers then. At an other time I appeared in this Chamber before His Honor Mr Justice Shand and His Honor Mr Justice Gorrie. I had left in my possession or given to me, as nearly as I recollect, 48 or 50 letters of the crew of the 'Amie Ann' and 'Pioneer' to be delivered, and many of them to be sent away by the Mail steamer to different parts of the world. I have a little Post office attached to my consulate for American sailors and Americans generally. I have six large rooms in my office. There is a room which I call the "Sailors' room." Distressed seamen that are in health are obliged to visit the Consulate every morning at 10 o'clock that they are here and they remain generally until one o'clock, come back at two and remain till three, in order that I may ship them when an application is made. In this room there are tables and chairs furnished, stationery, pens and ink, so they may write to their friends. These letters when finished are handed over to me, I put them in the box kept for that purpose. When an opportunity offers I distribute those letters; as a fact the sailors constantly use that room. Looking over the letters one day, I found one for the Editor of the *Commercial Gazette* and some others. I gave them to a sailor to distribute, he brought back three, among them one addressed to the *Commercial Gazette*. On the following day I had occasion to visit the office of the *Commercial Gazette* on business. That business was to hand to Mr Channell in person a corrected proof of one of my letters on Seychelles. As I was about leaving his office I had forgotten the sailors' letter which I had in my pocket. I turned back and handed it to Mr Channell. As far as I can recollect there was no remark made. I did not suggest to the seamen of the *Amie Ann* the idea of writing to the *Commercial Gazette*. I said to Mr Channell: Here is a letter for you, and I handed it over to him and left the office. I think about ten days after this I went to Mr Channell's again. The first time he said nothing to me about the letter. The second time I went to his office was to hand him another proof of a letter I had written for the Royal Society of Arts and Sciences. I was there for some time in his office. When about leaving, Mr Channell called my attention to a letter which he handed me and asked me to read it. I read it carefully. Mr Channell told me that the letter was the one handed by me to him some time before. He also asked if the statement made by William, was true, I mean the statement contained in the letter. My answer was that as far as the charges made about the crew went, I believe them perfectly true, but there was a portion of the letter which I recommended Mr Channell not to publish, as I knew nothing about it. The letter shown to me is the one I refer to. The passage I recommended Mr Channell not to publish was a passage concerning Mr. Robinson. I told Mr. Channell I knew nothing about the fact mentioned in that passage. As regards the other passages of the letter I told him that in my belief they were perfectly true. I remember telling Mr. Channell that the story was not half told in that letter. Both as a man and as a Consul of the United States I told Mr. Channell that those statements were correct. Mr. Channell published the letter.

The case was then postponed *sine die* on account of the Assizes beginning next week.

(To be continued.)

#### SUPREME COURT.

Wednesday, 7th August 1872.

Before His Honor the Chief Judge and the Honorable N. G. Bestel in Court.

PEIRCE v. CHANNELL AND WIFE.

Christopher Stephen Kneebone, Custom House Officer, plaintiff's witness, sworn, examined by Mr Pellereau: I was a tidewater, and as such I performed duty upon the *Amie Ann* from the 6th

November to the 7th December 1871. I recollect old copper which had been stripped from the bottom of the *Amie Ann* and brought to the Custom House. That copper was put under the Crown Locks. I do not know the exact weight of it. It was done in an open manner and under my superintendence as Custom House Officer. That sheathing was not stripped from the ship here but at Seychelles, as the Captain informed me. The Captain was not taken in contravention for that copper, I am not personally aware that he was fined for that. I remained on board the *Amie Ann* from the 6th of November to the 7th December, I noticed nothing extraordinary. There might have been a few rows during the month, and as a Custom House Officer it was not my business to look upon them. The row I heard chiefly was between the Captain and Mr. Macomber, it was on the mate side. I believe the words used by Macomber were improper for an officer towards his superior officer.

Cross examined by Mr Newton.—I witnessed two rows. I cannot remember on what day the first row took place, on the first row I recollect the first officer was put under security to keep the peace, it was in the afternoon at 4 o'clock. I cannot say whether the first row took place on shore or on board. I was not present at the row. I did not say the chief Officer was wrong on the first occasion. To the best of my knowledge there were two occasions. On the second occasion the row took place at about half past eight at night, it took place on board on deck. The Captain spoke to Macomber I did not pay attention. Then the officer got insolent and I went into the cabin. He meant to ask the Captain whether he could work the next morning. I do not know what the Captain answered. As far it goes, Mr Macomber was insolent towards the Captain. The second officer was there and he mentioned something too. It was the chief mate who was insolent, he used abusive language towards the Captain. I know it was unbecoming language but I do not recollect the words. I would not repeat the words because I would not be sure of the words. I hear abusive language so often that I might make a confusion of words in one case with words in another. I fancy the second officer was insolent on that occasion, he asked the Captain to pay his passage, the second officer made use of abusive language, it was language unbecoming while the Captain was going away, I believe to the Hotel. While the officers were being insolent to the Captain, the Captain told them to keep quiet and that he would see. I had taken my dinner that day at 5 p.m. I had nothing to drink, there is no such thing on board the *Amie Ann*.

William Warren formerly a Sergeant Major of Police now on pension, plaintiff's witness, sworn, examined by Mr Pellereau:

I was formerly Sergeant-Major of Police at Seychelles and the head of that department there. There was an American Consul at that time there, Mr Attwater. I knew a man named Henry Williams cook on board the *Amie Ann*, he preferred no complaint to my department, but the Police arrested him and took him to the Consul. On the application of the Consul himself, he was arrested for desertion. I myself took him to the Consul, he preferred no complaint to the Consul against any body, he was committed on shore to prison by the Consul. He broke out of jail about 3 hours afterwards; he was arrested again on the same day. He was then taken back to prison. I saw Henry Williams in Mauritius in 1871, he was arrested at Pailles and brought up to the Moka Police Station of which I was then in charge. He had been arrested by the Police without a warrant. As there was no information I let him go. There was another arrested, I let him go also. I met the Captain on the same day at about 6 o'clock p.m.

Cross-examined by Mr Newton: When I brought the man Henry Williams to the American Consul at Seychelles, I took him back with me. We remained about ten minutes at the Consul's.

Nicolas Elisabeth, plaintiff's witness, sworn, examined by Mr Pellereau:



I was formerly at Paturau & Co.'s and am now about to enter the Police Department. I was a sailor on board the *Amie Ann*, during about 6 months. I shipped here. I was well treated. I was ill with fever and the Captain treated me as his own child. At every port where we landed we got fresh food on board, and it cannot be said that we had only salt beef, we had fresh fish, and the diet was changed every day. They did not beat me. The remainder of the crew was treated like myself, I did not see them beaten. Why should I lie? On board we were all contented, we were all pleased. When we arrived here at the Bell Buoy, we got our money and went on shore and returned on board the next morning. When we got into the harbour, the only work to be done was to clean the ship and the men refused to do it, they went away, I alone made the work and had nothing disagreeable with the Captain. I did not hear that any thing was said against the Captain when the vessel went into the Dock. There were a good many portuguese on board and I do not understand their language. I speak creole. There was another creole on board, his name was Jean. I understand English well, but I do not understand American language. (A laugh.) I had knowledge of the dissensions between the Captain and the crew, but I did not take notice of them, because I know it was all none sense. They wrote on account of bad treatment. He gave rations to those who worked, and to those who did not work he did not give anything. They told me they wrote, they wrote before me and I saw it.

Cross-examined by Mr Newton. There were a good many of the Portuguese and an American named Dennis. He told me to put my writing on the paper. I would not. It was on shore that that took place, they wrote above Mr Rouillard's Court. I was outside and they were writing inside. They called me to sign. I do not know how many there were. I do not remember, it is so long since. All the crew did not go, only two or three. I do not know how many. I came on shore for a walk to look to the town when I came to the Court to hear the cases. I went to the American Consul and I went alone, he gave me a paper, I did not know what it was. I took it away and I found it was a certificate of discharge. I went on account of what the sailors told me, they told me to go to the Consul to take my discharge, I did not know what a discharge was. I did not get paid because my agreement was to share in the proceeds of the oil, we were not lucky enough to catch whales, so I did not get any thing. We landed at Johanna and Denis Island, one of the Seychelles group and at other small islands, but we had a lot of provisions. We did not take provisions because we wanted them, but only in case we should want some. We had on board flour to make bread and biscuits. Every day bread was made on board. We had potatoes, rice, sweet potatoes, onions and other provisions that could last on board for some time. We had salt beef. As soon as we landed we had fresh beef at Johanna. We bought a bullock, and took it on board. Every day at sea, as soon as our fresh beef was consumed, we had salt beef. We remained about 15 days at Johanna. I do not remember how long we were eating that ox. I do not think it lasted a week. We remained about a day and a half at Denis Island, there we took fowls, fish and pigs. The fowls lasted about 3 or 4 months. We took about 100 fowls, they did not die on board. Fowls are cheap there because there are no purchasers, they are cheaper than at Seychelles. At Seychelles a fowl costs 9 to 10 pence. I cannot say how many fowls could be bought at Denis Island for three dollars. The Captain and Mate went on shore. Those provisions lasted about 4 months. When we left Denis Island I think we called at Agalega Island before coming to Mauritius. At Agalega we only took pigs, fresh and dry cocoanuts. We took about 5 or 6 pigs. There were other pigs on board. I know what took place on board during our voyage. I have seen the Chief mate strike the men, he even struck me once because I did not know how to steer. I was not displeased

with that, because he taught me my duty. I did not see him strike any one else, as far as I can remember. I have seen the second mate strike people on board, he struck them before me here in the harbour. I can't tell a lie because it is a bad think. The captain never struck any body; he was always good, never angry and he never swore at any one. For me the Captain is a man without fault.

Re-examined by Mr Pellereau :

For being sure I am sure we took provisions during the voyage, but as to the amount I am not sure.

By the Court : Since I have left the ship I have worked at Paturau's at the rate of \$10 a month. He sent me away on account of some none sense of my comrades. I did not work with the captain. The captain gave me only a mouthful to eat and I washed his wife's linen for about 5 or 6 days. Paturau dismissed me because he charged me with having robbed a piece of copper. I brought a complaint before the Magistrate, there was no charge brought against me. I left Paturau on the 6th July last,

To be continued.)



The following is Captain Wales' letter:—

To the Editor of the *Commercial Gazette*.

Sir,

In your issue of this day is published part of the evidence of the American Consul in the case of "Peirce v. Channell." In that evidence are certain statements and inferences with regard to me and Mr. A. W. Barclay as Surveyors of the American Whaling Barque *Amie Ann* which call imperatively for notice from me, and I claim from your sense of justice, place in the columns of the *Commercial Gazette* for the following remarks.

It is inferred by the Consul, that the Surveyors represented the condition of the *Amie Ann* as being worse than it really was, and her valuation of £1.10 per ton in her damaged state as lower than it really was, thus aiding the Master in the abandonment of his vessel to the prejudice of the Insurers. Serious as this charge may appear, I have the conviction that there is no real necessity for my offering any explanation in vindication of my character so unfairly assailed, so far as those who have known me in this Colony for more than 17 years are concerned; but as the *Commercial Gazette* is circulated where such statements if passed unnoticed by me might be accepted as true, I would call attention to the following facts.

The *Amie Ann* (formerly the brig *Jane*) of the burthen of 220 tons was built in Nova Scotia in 1861; she is classed in the American Lloyd's 2 $\frac{1}{4}$  which is a comparatively low classification, she is iron fastened throughout, sheathed with wood and copper over cement, (the copper has been removed) she was docked here for the purpose of ascertaining and repairing the damage she might have sustained from striking heavily on a coral reef; she was surveyed by Mr Barclay and me, and we made the Report which has been I consider so unfairly commented on by the American Consul. Fortunately the *Amie Ann* is still unsold, she is safely moored in the harbour, and will shortly be disposed of by public auction; her sale price will test the correctness of our valuation of £ 1.10 per ton; when docked for examination she will be found in the precise condition described in our Survey Report, and should the purchaser repair and fit her for sea, I venture to predict that her repairs will cost more than her value when completed. This would be sufficient reason for the abandonment of any vessel, whatever her nationality. The worth of the *Amie Ann* when new could not I think have exceeded £ 2000, eleven years wear and tear have lowered that value quite 50 o/o, and her repairs without taking into calculation the contingent probabilities mentioned in the *Nota Bene* the Consul remarks on, will certainly exceed £ 1000; I

venture to say that Surveyors and heads of Marine Establishments in this Port will agree with me in this view of the case.

As for the "Nota Bene" that aroused so much suspicion, it is simply an opinion, not necessarily correct in the *Amie Ann* case, though a similar opinion was perfectly correct in regard to the *Fathe Salem*, that had sustained injuries almost identical with those of the *Amie Ann* when she struck a short time since on the reef at Flat Island—when her counter keel was removed, the main keel was found to be badly split, and it was necessary to change a considerable portion of it (a very expensive operation.) Therefore the opinion with regard to the *Amie Ann* was one which might well be offered by Surveyors to Owners and Underwriters; it has to do with contingent possibilities, and is so far valuable; it was added, not at the request of either Agent or Master of the *Amie Ann*, to strengthen a Survey Report they did not consider strong enough to warrant the abandonment of the vessel, but at my own suggestion; it was added to the Report in the form of an N. B., to avoid the trouble and delay of writing over again a long Report in triplicate. That this statement is correct and that the Survey Report and N. B. were signed at the same time is abundantly proved by my note on the subject to Mr Robinson, now in the hands of the attorney for the defendant, who is at liberty to shew it to any one curious in the matter.

The remarks of the Consul on the duties of Surveyors are only worthy of notice as betraying either his ignorance of the matter, or his ill-will towards the Surveyors; for it is absolutely necessary for the Surveyor to ask questions if they desire to arrive at the truth, and the valuation of vessels is their especial province in all cases of General Average, or projected abandonment.

I know nothing of the differences between Captain Peirce and his crew; in such cases there are generally faults on both sides; as an old master I naturally incline to the master's side of the question; but I assert and will maintain, that in face of the inevitably heavy expenses of repair (irrespective of the possible contingencies mentioned in the "Nota Bene") the master was justified in abandoning the *Amie Ann*, and that had he, without consulting the owners and underwriters, repaired the vessel, and called on the latter to contribute their proportion of the heavy outlay in this Port on a comparatively worthless property like the *Amie Ann*, he would have acted unwisely, and some might be found to say, unfairly to all concerned.

I have the honor to be,

Your most obedient servant,

DOUGLAS WALES.

31st August 1872.



To the Editor of the *Commercial Gazette*.

Sir,

I beg to thank you for publishing my letter of the 31st ultimo in your issue of to-day. I have not the slightest intention of disputing your comments on it, (of course I don't acquiesce in them;) it is sufficient for me that my statement has been made public. I am quite willing to leave the matter so far as I am concerned in the hands of your readers, among whom I count many friends, but I should like to make a very short remark on that part of your leader which treats of the valuation of the "*Amie Ann*" at £1.10 a ton, as compared with her Insurance for £2,400.

That the *Amie Ann* ought to be abandoned I have shewn, and the valuation of £1.10 per ton has to do, not with her insured value in the United States, but with her value in her damaged condition in this Port, and prices usually obtained for vessels situated as the *Amie Ann* now is. The following list which might be considerably increased if needful will prove that £1.10 a ton is a very fair valuation:—

Name.	Tons	Sale Price.	Price per ton.	New Name.
			£ s. d.	
Perigny .....	467	\$1100	0 9 4	'Bhool Nugger'
Bailly de Suffren	537	3105	1 3 1	'Stag'
Etienne .....	402	3225	1 12 1	'Mamoda'
Johanna Maria..	702	4200	1 3 11	'Akbar Shah'
Villa Eugénie ...	277	1905	1 7 1	'Falcon'
Numa Vidal .....	545	3850	1 8 3	'Morning Star'
D'Artagnan .....	256	2150	1 13 7	'Fisherman'
Florida .....	305	3000	1 19 4	'Florida'

If you can extend your indulgence so far as to publish this I shall feel obliged and will trouble you with no further remarks.

I remain, your obedient servant,

D. WALES.

4th Sept. 1872.

## LEGAL NOTICES.

MAURITIUS—IN THE COURT OF  
VICE-ADMIRALTY.

**TO-DAY Tuesday** the fifteenth instant, at 1 P.M., in virtue of a decree of the Worshipful Judge given on the fourth October instant, in a case of Douglas Wales, Harbour Master against the vessel *Amie Ann*, the undersigned will sell by public auction, in front of the Custom House, the said barque *Amie Ann* burthen 220 tons, with her masts, standing and running rigging, &c., such as she will stand at the moment of adjudication.

15th October 1872.

G. A. RITTER,—Marshal.  
901.00 offered but not accepted.

In virtue of an Order of the United States Consul

**CAPTAIN CHARLES BABSON**, of the ship **New Era**, will receive offers to-day Tuesday at noon, at the office of the undersigned, for the loan of the sum of **twenty thousand dollars** or thereabouts, required to defray the necessary disbursements for repairs at this port, to be secured by Bottomry on the said vessel, her cargo and freight.

The **New Era** is bound to Boston direct, where the Bond will be made payable twenty days after her safe arrival.

Mauritius, 4th June 1872.

BLYTH BROTHERS & Co.



# THE

TUESDAY, NOVEMBER 19, 1872.

We had fully intended to have published the remainder of the evidence in the case of Peirce v. Channell and others, and, also, a summary of the pleadings in the case. We had further in intention to report the case of Shellam v. Leal and another; but, during the course of the addresses of Messrs Newton and Pellereau in the case of Peirce v. Channell and others, some observations were made by His Honor the Chief Judge as regards the propriety of publishing reports of such cases; and, moreover, words of a similar import fell from him during the arguments in the action of Shellam v. Leal and another. This fact led us to examine the Law regulating the matter,—it runs as follows:—

Article 292 of the Penal Code says: "Any publication of the acts of Government, or of the proceedings at the audiences of any Court or Tribunal, if made with inaccuracy and bad faith, shall be held to be a defamatory libel, and shall be punished as provided for in the preceding article."\* Again, "Under the like penalty, no publication can be made of the proceedings in any suit which shall be pending before any Court." Article 293 says: "It is likewise forbidden to give any report by means of printing or published writings, of any prosecution for outrage, or slander, or for defamation, under pain of a fine of from ten to fifty pounds sterling. It shall be lawful only to announce the complaint, and, in all cases, to publish the judgement."

In the presence of these provisions of the law so decisive in their nature, and of the remarks of the Chief Judge, we think it preferable to abstain from printing any thing further respecting either of the above mentioned cases.

We have at the same time to express our regret that so much of the evidence in the first case should have been published in our columns, but, then, it was done at the express request of the late Mr Channell, who did not wish that any thing in connection with the case in which the newspaper he founded and edited was concerned, should be held back from the public. This wish was, there can be no doubt of it, essentially a straight-forward and an honorable one; but as the law stands, it cannot be lawfully carried

We have, however, consolation, that in stopping short in our report it cannot be fairly said that justice has not been done to the plaintiff, since all the evidence given in Court up to the close of his case has been published with the opening address of his Counsel. And, although some of the depositions of the witnesses heard for the plaintiff were not printed, for they were examined after the close of the defendants' case, yet we believe we may assert that the most important part of the plaintiff's case has been placed before our readers, whereas some depositions telling, in our opinion, greatly in favor of the defendants have not been given. We hope, therefore, that the former direction of this newspaper will be considered, as it ought to be, free from any charge of unfair conduct.

But, while we submit to the exigencies of the law, we feel obliged to protest against what we consider its errors. Trials before a Court of Justice in which the public press is concerned, are essentially matters of public interest, and should therefore be reported as fully as possible. It is quite right that a wilfully inaccurate report, or one made in bad faith should be punished, but we cannot imagine any good reason for prohibiting an honest report of cases, even when they relate to slander and defamation. Surely, a case argued in full Court is public property, and what good end can be served by keeping its details in the dark we are at a loss to understand. We submit therefore that the law is defective and should be altered.

This seems to us so clear as hardly to admit of any argument, but still it may be as well to point out, that our law actually defeats one of the main objects for which a party considering himself libelled in any way, would bring an action; for we may conclude that he does so to vindicate his character. On the other hand the defendant must desire to shew either that what he said was true, or else that there were circumstances which either justified or excused its publication. But if the proceedings at the trial are not made public, how can this be done? We might illustrate the necessity of publicity in these cases by citations from English authorities, but we feel that it is needless to do so.

It will be observed that the second paragraph of Article 292 prohibits the publication of any proceedings of the cases pending before the Court, but we may declare, at once, that although we shall carefully abstain from publishing any report of the actions specified in Article 293, and also of any trial in which the private character of parties is attacked, we shall continue to report the proceedings of the Court as we have hitherto done, for if we are to wait for the judgment in every case, it would frequently occur that our reports would only appear after the causes heard had lost much, if not all of their interest.

\* That is to say, fine and imprisonment. d. C.G.



2481

*James*



half a dozen came out - sharing, and an  
every chair and small mirror suspended  
our admiring and scrutinizing for the  
sitting room by day, but at night at noon  
changed into a sitting room for John, Willie  
and I, by making a bed on the floor. Last  
Weary occupied the second room for bed  
and altogether we enjoyed it much after  
we got settled; it seemed to me like land  
I lost about two nights sleep when we first  
went to abide in the parlor for fear of disturbance  
Had never seen any but had an awful  
horror of them; at last I gave it all up and  
succeeded I must sleep in the parlor, me  
ing; after coming to this terrible conclusion, me  
evening while sitting by the table writing two or  
one may meet within half an hour of each  
other and one of them before he could get  
off and the other was sitting off before he had  
a chance. Their life is not considered danger-  
ous and the climate and is like the thing of a  
horror; however or not I don't care to be  
disturbed again. My number of hours in the  
he been with the horses and out; they are  
harmless but disagreeable looking creatures.  
John slowly recovering from his cold that  
Willie getting worse all the time requiring  
the constant care of one of us. He decided to  
have some over the care of him and the gener-  
ally useful to me; we got a negro woman  
for our servant (as all who work are here called)  
that Willie would not go to him at all, because  
afraid of them. The animal one must not

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June

June